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From the Editor

The term Ancient Rome refers to the city of Rome, which was located in central Italy; and also to the empire it came to rule, which covered the entire Mediterranean basin and much of western Europe. At its greatest extent in stretched from present-day northern England to southern Egypt, and from the Atlantic coast to the shores of the Persian Gulf.

Rome's location in central Italy placed it squarely within the Mediterranean cluster of civilizations. The most famous of these was that of the Ancient Greeks, but others included those of the Phoenicians, the Carthaginians and the Etruscans, plus several lesser-known peoples such as the Lycians. The civilization of Ancient Rome was rooted, directly or indirectly, in all these earlier culture.

In its early centuries Rome was particularly influenced by the powerful Etruscan civilization to its north, from which it acquired many aspects of its culture. As Rome's reach expanded, it came into direct contact with the Greeks. From then on Greek influence would become an increasingly important element within Roman life. However, the Romans would give Greek culture their own slant, giving it a new grandeur which can be seen in Roman remains throughout the empire.

Polish legislation in the Greek resources

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Abstract

Criminal law should be treated in the field of GG during the II. World War as a term that had a diverse character. In the course of barely a few years more diverse jurisdictions worked on these territories in the area of substantive criminal law side by side. The occupiers chose here for an unusual solution. It was created a two-tier legal system. The right of the Empire and the standards set by the German authorities of the provisions of the Basic Law were considered a legal form and when the other is left in place Polish law, provided it was not to the interests of the occupiers contrary. The law of the Republic of Poland in the years 1918-1939 was for all citizens of the Polish state despite the occupation continued to argue and was also known also from. Polish Underground State acknowledged. Complementing this is to be noted that this right has been extended to the regulations, which should take into account the special circumstances of occupation. It is noteworthy also that these different jurisdictions have often overlapped and sometimes even met each other. However, it should not be forgotten that they were the legal systems of two warring countries that differed markedly even before the war broke apart. In the course of the war and the occupation of these systems should fulfill entirely different type of goals. Most emphatically, it came just in the area of criminal law expressed, followed in the same act by the judicial organs of a State.

Keywords: *Roman law, polish Law, legislation, greek*

The dominant legal system in the GG was the German law. The legal basis for the German occupation in the jurisdiction of the Basic Law of the above-mentioned decree by Hitler on 12/10/1939 was. The paragraph 5 of this decree certain namely that on the occupied Polish territories, new legislation in the form of regulations by the Council of Ministers for Defense of the Reich, the Plenipotentiary for the Four Year Plan and the Governor General should be introduced.[*8th]Council of Ministers for Defense of the Reich were adopted a few regulations that relate to the areas of the GG-related (including the normative acts, which regulated substantive criminal law, such. As the pass criminal Regulation of 27 May 1942 RGBl I, pp 348- 350). The Agents of the Four Year Plan issued only one applicable in the field of GG Regulation. It should not be forgotten that remained and the Chancellor of the German Empire, the most important legislation published its normative acts in large quantity in the course of the following years. During the occupation, even those normative acts were enacted for GG, those of other central organs of the Third Reich as Interior Minister, Justice Minister, Labor Minister, Finance Minister, Defense Minister General Representative adopted for the administrative affairs of the Empire and General Manager for work. Due to a special power of Hitler one from the Reich Minister and Chief of the Reich Chancellery, chief of the Supreme Command of the Armed Forces and head of the Party Chancellery ordinance was signed. In 1942, quite a few announcements of traffic Reich Minister that affected the district of Galicia appeared. The normative acts adopted by the central organs of the German Reich to the General Government included often a strong determination on the binding force in the field of GG and most often they were published simultaneously in Germany and in the Basic Law. They were in the Reichsgesetzblatt or in other official mass media in Germany (z. B. in the realm worksheet) and in the Official Gazette for the General Government published (including the normative acts, which regulated substantive criminal law, for. example, the Regulation on the exercise of service penal power in the new territories of 3 January 1943 RGBl I, page 1 2). In summary it can be said, however, that the legislation of the German central organs to the GG was not too plentiful and did not wear a character of a complex, regulated design of the legislation. It should be rather stated that there were transitional actions that can be attributed to the need of the hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law. Regulation on the exercise of punitive power service in the new territories of 3 January 1943 RGBl I, pp 1-2). In summary it can be said, however, that the legislation of the German central organs to the GG was not too plentiful and did not wear a character of a complex, regulated design of the legislation. It should be rather stated that there were

transitional actions that can be attributed to the need of the hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law. Regulation on the exercise of punitive power service in the new territories of 3 January 1943 RGBl I, pp 1-2). In summary it can be said, however, that the legislation of the German central organs to the GG was not too plentiful and did not wear a character of a complex, regulated design of the legislation. It should be rather stated that there were transitional actions that can be attributed to the need of the hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law. was controlled design of the legislation. It should be rather stated that there were transitional actions that can be attributed to the need of the hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law. was controlled design of the legislation. It should be rather stated that there were transitional actions that can be attributed to the need of the hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law.[*9] The proclamations had a political-propagandistic nature, the decrees related primarily to state system issues the regulations replaced laws and should establish the system of applicable law (the Governor General issued many regulations which included the provisions of substantive criminal law. I analyze it in following in this article). Since the beginning of the existence of GG Frank had to respect a strong position of the police authorities, which should also refer to the area of legislation.After the end of hostilities in October 1939, Germany has made a division of the occupied territories of the Polish state. The northern and eastern regions (including Greater Poland, Silesia, Eastern Pomerania) were incorporated into the Third Reich. From the remaining areas (Little Poland Mazovia, Lublin region) was on 26.10.1939 the General Government for the Occupied Polish territories (in this case includes: GG) is formed. On 07/31/1940 its name was changed to the General Government. This was divided into four districts: Warsaw, Radom, Lublin and Krakow. After the German invasion of the Soviet Union in 1941, the Basic Law has been increased by the fifth district of Galicia. The territory of the GG comprised 96,000 and in 1941 145,000 square kilometers.[*1]

The General was a structure of an unclear structural-legal position. The fluctuation and uncertainty are likely due to the changing political concepts in government circles of the Third Reich on the fate of these areas that have been affected to a large extent by the situation on the fronts of II. World War. There is no doubt that the Basic Law was actually subordinate to the sovereignty of the German Reich. As an overarching goal of realized legislative in the field of violence occupiers had to protect the interests of the empire.[*2]

I propose to construct a model of the economic and legal activities of women in Ptolemaic and Roman Egypt as represented in Demotic documentary texts. This will involve detailed study of economic and legal documents written in Demotic such as marriage agreements, annuity contracts, wills, documents of divorce, sale, receipt, and renunciation, as well as letters. Many of these documents come from family archives. Most of these will be from published sources. Such a model will be compared with the existing model of women in Ptolemaic and Roman Egypt presently based on Greek sources. Greater knowledge of the lives of Egyptian women in these periods can also be used to add to knowledge of women in the Pharaonic period, due to the differing nature and greater quantity of the material surviving from later times.

The periods of Egyptian history under discussion here are Ptolemaic and Roman, i.e. from the conquest of Alexander in 332 BC to the end of the 1st/early 2nd Century AD after which time Demotic ceased to be used for writing official documents. The texts which are the focus of the study are written in Demotic. This form of Egyptian began to be used in the time of Psammetichus I of the 26th Dynasty (ca. 650 BC) and by the end of this Dynasty, Demotic was the chief means of recording business and everyday transactions. In the Ptolemaic period Demotic was also used to write literary texts.1 Under the Romans, Demotic ceased to be used for business documents, probably because of government policy, although the production of literary, religious and scientific texts continued.2 Thus most of the Demotic texts which will be used in this dissertation date to the Ptolemaic period, especially as these are chiefly of a legal and economic nature

Because of Hitler's decree of 12.10.1939 (entered into force on 26.10.) A dualistic legal form in the GG designed. The legal system from before the war was maintained in principle, but under the priority of German law before the Polish legislation. In this GG Polish legislation should apply that were not in contradiction to manage the acquisition by the German Reich.[*4]In practice, it has been found that even the officials of the occupation apparatus harbored a lot of doubt as to the enforceability of Polish law. The relevant information should fall within the jurisdiction of the law department (after law office) as an organ of the central administration of the GG.[*5]

The package of legislation from the 10.26.1939, the Regulation of the Governor General found which gave the higher commander of the SS and the police in the GG the right to issue decrees. It was stressed that in matters of the SS and the police should get permission from Frank the fundamental concern of the higher commanders, however, he was allowed to the other, regulations required for order management and

security are automatically adopted. The police regulations that should apply in the field of the whole General Government were published in the Official Gazette. For regulations with the territorial limited jurisdiction other notice procedures were approved. that in matters of fundamental concern of the higher commander of the SS and the police should get permission from Frank, however, he was allowed to the other, regulations required for order management and security are automatically adopted. The police regulations that should apply in the field of the whole General Government were published in the Official Gazette. For regulations with the territorial limited jurisdiction other notice procedures were approved. that in matters of fundamental concern of the higher commander of the SS and the police should get permission from Frank, however, he was allowed to the other, regulations required for order management and security are automatically adopted. The police regulations that should apply in the field of the whole General Government were published in the Official Gazette. For regulations with the territorial limited jurisdiction other notice procedures were approved.[* 10]The role of an official medium filled the "Official Gazette of the Governor General of the occupied Polish territories", which was issued in parallel since 10.31.1939 in the Basic Law and in the realm. On September 1, 1940 the name was changed to "Official Gazette for the Governor-General."

Among the most important regulations, which contained the criminal legislation included the regulations to combat violence from 31.10.1939, Regulation on the special courts of 15.10.1939, Regulation on the Polish jurisdiction of 19.02.1940, Regulation on the German jurisdiction from 19/02/1940 .[* 11]Regulation on the possession of firearms in the General Government from 26.11.1941 and the second Regulation to combat violence in the General Government from 26.11.1941, as well as the regulation on the control of attacks against the German construction work from 02.10.1943.[* 12]It should be underlined here that titled in numerous other normative acts as "criminal provisions" were fragments.

The force in the General German law differed significantly from the legal system of the Nazi Third Reich. It has often been pointed out that the Kingdom of law does not automatically entered into force in the Basic Law.[* 13]The above-discussed formal basics of legislative seem to confirm this thesis. yet it should not be forgotten that can be used by the authorities, and above all by the courts as a credible test the effectiveness of a legal system only the analysis of its practical application. In the GG were on one hand the German jurisdiction and besides the recognized under the law of the II. Republic of Poland Polish or non-German jurisdiction. In which the German jurisdiction introductory regulation was clearly stressed that both the provisions of the German substantive

and procedural law should be applied in the field of criminal and civil jurisdiction. After the processing of the files of several dishes I've found[* 14]

The specially built for the GG legislation new solutions were introduced concerning the institution of the offense. Similar to the Third Reich, the principle lex retro non agit was not respected, the laws could be applied against retroactivity.

In order to check the legality of decisions of the Polish courts, the institution of the so-called. Verification law was introduced. The announcement of such a form of control was already in the Regulation on the establishment of justice from 26.10.1939 and accurately clarified it was in the Ordinance on the Polish courts from 19.02.1940. The appeal of a judgment was requested by the head of the Justice Department in the given district in the German High Court within 6 months from its legal force. As a prerequisite was a violation of the public interest. The German high court could approve the decision or cancel it. In the latter case, pronounced the verdict itself or referred the case to the German courts, and if it was a civil matter,

Characteristic of the criminal situation in the GG was the fact that the review law came into force retroactively. All decisions of the Polish courts, which entered into force after 31 July 1938, could be reviewed. From this for Poland anyway unfavorable principle a broad exception has been made yet. In particularly relevant cases if the decision violated the interests of the German nation, the decision could be reviewed without any consideration of the time that had elapsed since the date of its legal effect. The decision on the review of the decision could be taken by GG in such a situation by the head of the justice department.[* 18]

A fundamental normative act in the field of substantive criminal law was the regulation on the control of violence from 31.10.1939. At the beginning of the existence of the Basic Law, a catalog was separated from matters that were of interest for the safety of the occupier most essential. Among them were counted:

- acts of violence against the rich and against the German authorities in the GG;

- willful damage done to institutions of the German authorities and their labor organizations or institutions of public utility;

- Call or encouragement to disobey regulations or orders of the German authorities;

- acts of violence against the Germans because they belong to the German nation;

- arson of property of the Germans ".

The responsibility also helped the assistants and instigator. Punishable was the attempt of these actions, the concept of an

experiment designed far. "Those who conspired to commit a crime, whoever comes to this, with others to an agreement who is offering the commission of a crime or accepting such an offer." The offense also referred to people who had learned of the commission intent of the criminal offenses and of which the authorities or the person at risk have not been informed.[* 19]

The regulation on gun ownership from 09/12/1939, so even from before the foundation of the Basic Law should apply to persons with weapons, ammunition, hand grenades, explosives or other war equipment possessed. The provisions of that Regulation have been maintained in the Basic Law also expanded accordingly and "who gets a message about an illegal gun ownership by another person and notifying the authorities can also be subject to a penalty."[* 20]

During the occupation, the transfer of solutions in the field of substantive criminal law of the Third Reich could have happened to the Basic Law. The easiest way were the regulations of Hitler, which entered into force in both the Empire and in GG (they were also published in the Official Gazette of the Government General).[* 21]Another type was the law of the Governor General, which took into account the changes in the law in Germany. This refers, for example, to the introduction of III from. Empire known construction "of a habit offender". The "as strict or as much condemned by criminals that they should be regarded as a constant danger to the community", were from the Polish (non-German) jurisdiction "held to ensure" or even condemned by the German special courts to death are, if it was made out of consideration for "the protection of the general public or the need for a just retribution." In the realities of the Basic Law, it meant the chance to break the fundamental principles of legality,[* 22]

Similar to the German Reich the generalization of criminal responsibility for any violations of the applicable provisions in the Basic Law was introduced towards the end of the war. Punishable under Regulation from 10.02.1943 the violation of laws, regulations, orders and decrees of the authorities was too difficult with the intention of "the German integration in the General Government" or hinder it. This also was true for the trial; responsibility also wore the assistants and instigator.[* 23]

In the General even a few hundred normative acts were (they made leges speziales in relation to the Polish and German criminal code is) adopted in which the actions of criminal deeds were told that remain under normal circumstances beyond the scope of criminal law. A wide expanded penalization concerned such areas as cultural activities, work and club activity.[* 24]

The definitions of the issues were often controlled according to a constant pattern. A standard formula was worded as follows: "Whoever undertakes to act contrary to its provisions shall be punished".[* 25]

A characteristic feature of substantive criminal law in the Basic Law, the difference that annexed by another of the Third Reich territories, was not only to maintain the privileged status of the Germans, but also the differentiation of the legal status of Poles and Jews. Was expressed it in the already adopted in 1939 normative acts. The rules established for the Jews contained more far-reaching and don'ts and saw significantly tougher sanctions for their injuries. As an example the rules on the introduction of the obligation to work for the Polish population of the GG can serve. For the Jews a special regulation on the introduction of compulsory labor was adopted on the same day that still contained stricter regulations.[* 27]In the legislative way the Jews of personal liberty, property, freedom of choice of employment, the right to education, the freedom of choice of residence, freedom of movement, were robbed in the overseas trip. It has even introduced the ban to leave the residence.[* 28]Since mid-1941, the number of legislative acts adopted exclusively for the Jewish population is drastically reduced. Maybe it is due to the increasing competencies of Himmler in relation to the planned extermination of the Jews.[* 29] pright obtained from the occupiers learned Polish law in terms of the system of no changes in the penal code of 1932 resulting penalties. The occupiers, however, have limited the verdict freedom of Polish judges. There have been limited to date skills of Polish courts because they were considered by the occupation authorities of the GG Justice Department as permissions from the character of the grace of law. The authorities of the justice department have declared that the Polish courts no longer have the right, on the sentencing to probation or parole to recognize because they were to be regarded as acts of grace. The extraordinary mitigation of punishment, however, was treated differently because she was regarded as an institution, which refers on punishment and not to the grace of law. In which in some cases are entitled to the court right to withdraw from the penalty imposed despite the Guilty speaking, the occupiers have the right to decide reserved.[* 30]

The sanctions system

The changes made in the Third Reich within the penal system were naturally respected the judicial system of the Basic Law. In the imported GG criminal provisions of the following catalog of the fines was utilized: death, severe prison, jail, fine, fine asset seizure (they could be separated or imposed as an additional penalty). The additional penalties following penalties were counted: permanent or temporarily limited prohibition (it

concerned the doctors), forced labor in the forest. It also was a chance to condemn the Bußzahlung in favor of the victim.

It should be emphasized that the authorities of the Third Reich had also considered the concept of order are kept on the territory of the Basic Law only with the help of police coercion. For the local population this would have meant the absolute deprivation of any legal system. Primarily for economic reasons, this concept was rejected. The Basic Law should be the object of exploitation by the Government and in connection therewith, relying on police action was recognized as inadmissible because they had made a normal functioning of the economic life impossible.[*31]Gained the upper hand of the view that the establishment of a dualistic legal system is practical, which should, however, administer justice due to the drastically strict criminal laws. Matters referred to above and in the fundamental regulation to combat violence from 31/10/1939 (§ 1-9) were threatened with mandatory death penalty.[*32]The scope of a draconian penalization in the GG testifies to the fact that this punishment (mandatory or optional) was provided in nearly 30 published in the Official Gazette of the Government General normative acts. These rules issues were regulated, which were not threatened even in the realm of the highest penalties.[*33]The most important concern the aforementioned Regulation to combat attacks against the German integration in the General Government from 02.10.1943, was that extended criminal liability for any violations of the applicable provisions in the General Government and threatened with the death penalty was. The most spectacular example concerns the condemnation of the Jews to death if they are not relocated to ghettos or left their limitations. Plus, all death penalty were threatened that gave them refuge, especially when they brought the Jews out of the ghetto borders, they fed or hidden.[*34]

None of the occupied countries, the Germans have introduced so repressive regulations. The economic interests of the occupier served here as the foundation of penalization any resistance to the entry of agricultural products from the GG authorities (and particularly the sabotage of compulsory agricultural quotas). The threat of the death penalty regulations were in GG triple (1942, 1943, 1944), giving the criminal facts were significantly expanded in relation to the pattern of 1942 in the coming years. the duration of the state of emergency for the entry of agricultural products was also extended. In 1942, this was for the period from 1:08. to 30.11. certainly; for the years 1943 and 1944 however, for those from 15:07 to 20:12.).[*35]As part of a maximum material exploitation of the population, the very common threat to be (as in more than 60 normative acts) called with the unlimited fine height and different seizure types (in more than 30 normative acts).[*36]

It should be noted that Himmler next to the system of criminal law and the judicial system in the Basic Law nor had the direct child concentration and extermination camps available. The deportation to the camps did not belong to the catalog of penalties provided in criminal law, but from the perspective of the prisoners could be regarded as one of the most sensitive sanction

I am aware of two general surveys which attempt to give an impression of women in pharaonic Egypt:

Tyldesley, Joyce. 1995. Daughters of Isis: Women of Ancient Egypt. Harmondsworth: Penguin.

Watterson, Barbara. 1991. Women in Ancient Egypt. Stroud: Alan Sutton.

Further issues involving Egyptian women have been studied; topics such as marriage and inheritance, amongst others, have been well explored: law,5 marriage and marriage contracts,6 economy,7 inheritance,8 literature,9 and religion.10 The lives of Egyptian women have also received attention in surveys of Late Antiquity: whether in surveys of women in that period or of Late Antique Egypt.11 There are published (family) archives which involve women from the Pharaonic period12 as well as the Late, Ptolemaic and Roman.13

However, rarely are such issues taken beyond the data and studied as aspects of the life of an Egyptian woman or with a view to producing a model for the life of an Egyptian woman: her roles as a member of a household, and her economic and legal activity whether on behalf of her family or in her own right, and how these differed from or were the same as those of an Egyptian man. Integrating these individual aspects would go some way towards providing a comprehensive model which could be compared with that existing for Ptolemaic or Roman period women in Greek texts14 or women elsewhere in the Near East.15 Indeed, women's history - whether in terms of representations of women in literature or women as legal and economic entities - has attracted considerable attention in the areas of classical and biblical studies, for example:16 Jewish women in biblical studies,17 in the Hellenistic world,18 and in Egypt.19

A considerable amount of work has been done on the social history of Egypt in the Ptolemaic and Roman periods.20 However, almost all of this is based on Greek material studied by Classicists and thus approached from the viewpoint of the Classical world. As Bowman and Woolf write, "...the Greek papyri from Ptolemaic Egypt have been very well served by Greek papyrologists whilst the far smaller number of

Demotists has not been able to do justice to a corpus of demotic papyri which is very much larger than the published sample would suggest."21

Comparison between Egypt and other Hellenized areas or elsewhere in the Roman Empire is productive and relevant; Egypt was, after all, a part of the Hellenistic world and the Roman Empire. However, without consideration of traditions and practices of native Egyptians, understanding of the Greek material cannot be complete. The relative inaccessibility of the Demotic material prevents its extensive use by Classicists, and, as Pomeroy writes, "...social historians interested in Ptolemaic Egypt...would welcome more studies of the indigenous women by Demotists."22 Egyptologists themselves have lacked interest in the history of Egypt's later periods, tending to regard it as "degenerate." As Ritner writes: "Note how few Demotists there are in the world, how few contemporary Egyptologists extend their interests past Tutankhamen and the New Kingdom 'flowering.' In the past, Demotists have been considered almost 'suspect' to 'mainstream' Egyptologists.

References:

1. J .Goedicke, 1984; James, 1962; Wente, 1967 and 1990.
2. Amir, 1959; Andrews, 1990; Boswinkel and Pestman, 1982; Glanville, 1939; Pestman, 1980, 1981, 1993 and 1994; Shore and Smith, 1959: 52-60. Spiegelberg, 1913; Thompson, 1934.
3. Pomeroy, 1990.
4. See notes 17, 18 and 19. For Persia see, Brosius, 1996 and for Neo-Babylonian material see Roth, 1989a & b and 1993a.
5. The bibliographical information in this paper is in no way intended to be exhaustive.
6. Archer, 1994; Brock, 1994; Meyers, 1989.
7. Archer, 1990; Levine, 1991.
8. Porten, 1968: 234-263.
9. Bagnall, 1985 and 1993a; Bradley, 1980; Lewis, 1983 and 1986; Thompson, 1994 and 1988.
10. Bowman & Woolf, 1994b: 11: the small number of Demotists probably being due to lack of interest in the field of Egyptology itself (see note 23).
11. Pomeroy, 1990: vii.
12. Ritner, 1992: 284f.
13. Lewis, 1983: 18f and 1986: 4.
14. In fact it appears that this may even have been the intention of the rulers: "Through education...and tax-breaks, the new Greek rulers encouraged the adoption of their language within the

administration of Egypt" (Thompson, 1994: 77) as part of an overarching policy: "...the Ptolemies used education combined with tax incentives to encourage Hellenisation among the majority population of Egypt"(idem: 82). Thompson thinks it likely that bureaucrats received specialised scribal training due to the varied technical nature of Ptolemaic administrative documents (idem: 77). Lewis writes that Dryton, a Greek cavalry officer living in the largely Egyptian town of Pathyris had his third will witnessed by five men, four of whom "signed in native [i.e. demotic] script because there is not in this area the like number of Greeks" (1986: 99). See also Johnson, 1991a: 125-126.

15. See Wilfong, 1994, for use of Coptic in everyday transactions.

16. Even within the writing of Greek texts in Egypt there is much reason to stress the survival of Egyptian as a spoken language: "... the argument that Greek triumphed because of the greater sipmlicity of its alphabet implies that those who learnt it were not literate in Egyptian, but ... the rush, the Egyptian writing instrument, used instead of the reed for writing Greek in bilingual offices suggests rather the employment of scribes literatre in both languages .... I suspect that the Egyptian remained their first spoken language" (Thompson, 1994: 78).

17. As pointed out by Ray (Ray, 1994,: 63f) there are levels of literacy, varying with its use: One might term this "functional literacy" e.g. competence limited to writing mummy labels, and inability to write much else, "since this state of semi-literacy was sufficient for the everyday needs of the writer, it may not have been felt as a deficiency." Ray continues: "It is worth recalling the truism that ability to read and ability to write are not the same; certainly they do not correspond exactly in any society. This is especially true of a complex writing system such as demotic. The number who could read demotic, at least for simple economic purposes, is likely to have been considerable, although still far below that which is supposed to apply in the modern West. On the other hand, the number of demotic writers was doubtless far more restricted; this can be deduced, among other reasons, from the competence of the surviving texts...Demotic, like other scripts, was employed in a wide variety of situations, and the need for literacy, as well as the uses to which it was put, would have varied correspondingly widely"(Ray, 1994: 64).

18. Baines and Malek: 73 and 82.

19. It seems that Dryton's wife, Apollonia, was descended from a family of Egyptianized Greeks (Ritner, 1984: 187). However, that Apollonia was descended from Greeks is denied by Bagnall who considers her description of herself as Greek as a social affectation (Bagnall, 1988: 23-24).

20. Lewis, 1986: 88-103 and Pomeroy, 1990: 103-124, especially 118.

21. Pomeroy, 1990: 118-119.

22. Addressed at some length in Goudriaan, 1988 and Bilde et al., 1992.

23. Ritner, 1992: 289 and note 33.

24. Goudriaan, 1988: 116. In other words, people might have referred to themselves as being Greek or Egyptian in a particular document but outside of the document, in the Ptolemaic period at least, there is no evidence that status was linked to the ethnicity implied in such labels (certainly not officially). As discussed below, the same cannot be said of the sophisticated hierarchy of Roman citizenship, based to a largely on ethnicity, which replaced the Ptolemaic situation.

25. As note 33. See also Bowman, 1986: 122-128.

26. Goudriaan, 1988: 117. However, nomenclature seems to "accurately reflect ethnic origin" in the Family Archive from Siut (Johnson, 1991a: 128).

27. Bowman, 1986: 122-128; Lewis, 1983: 18-35; Seidl, 1973: 129-136.

28. Bowman, 1986: 62-63 and Lewis, 1983: 185-195 and 1993a: 279. With Egypt's absorption into the Roman Empire, the volume of documentation (but not religious, literary or scientific texts) in Demotic declined sharply and there is reason to believe that this was the product of Imperial policy. The apparent cessation of the "bipartite judiciary," to which there are no references in any source from the Roman period, reinforces that this was probably intentional of the part of the government (Lewis, 1993a: 276-281). "Egyptians stopped writing their business documents in Demotic because the Roman reorganization of the administration of Egypt denied such documents the recognition, or status, they had previously enjoyed"(idem: 277).

29. Pomeroy, 1990: 119f.; Huzar, 1988: 359-360; and Seidl, 1973: 139, and, despite the ius (3) liberorum, according to which a woman could act for herself without a guardian (Pomeroy, 1988: 718 & 721 and Seidl, 1973: 139f.), Seidl notes "doch treten die Frauen in den Papyri der Romerzeit meistens in einem kyrios auf" (Seidl, 1973: 140). However, in pointing out how misleading the information documents give can sometimes be, Pestman refers to land owned by one woman, Tatehathyris, who leases it on her own behalf before marriage and does so on at least one more occasion after marriage. Her husband then leases this same land and represents it as belonging to him without mention of his wife (Pestman, 1990: 52). However, here it is a question of the land being a family asset, and thus the man is acting on behalf of his family as the land is a family asset. Pestman also notes numerous occasions when

women acted in Greek law without a guardian but notes that "no scholar has been able to determine whether the use of the kyrios changed over time, or whether such assistance was required only in certain kinds of cases" (Pomeroy, 1990: 200 note 84 and Pestman, 1969b: 17-19). See also Pestman, 1995.

30. As suggested in Pomeroy, 1990: 120.

31. Pomeroy, 1990: 120f.

32. Further questions arise from this point: - Why would a Greek husband allow his Egyptian wife to do this? Why does he not make her act through a guardian?

33. The giving of movables or immovables as dowry may have had a range of sociological implications, see Pomeroy, 1988: 714-715.

34. Pomeroy, 1988: 711. This statement also serves to illustrate a lack of understanding of Pharaonic Egyptian traditions and their significance to Hellenistic Egyptian society, as "from an Egyptian point of view things may not have changed as much in Ptolemaic Egypt as a study of only the Greek records would suggest...the Ptolemies brought with them no fundamental changes in the structure of Egyptian society, including bureaucracy." (Johnson, 1991a: 131). In Egypt, if one is to look at Egyptian society as a whole, and not only that operating in the Greek speaking milieu, there could not be a question of "release of land to ownership by women" because women had always been able to own land. Such misunderstanding is apparent elsewhere in Pomeroy's work: "The principal reason for the high status of women in Ptolemaic Egypt is the reduction in the polarity between the sexes. This new balance is apparent in both literature and life," (Pomeroy, 1990: xvii.). Again, as far as the Egyptian sources are concerned it would appear that if women had a "high status" in Ptolemaic times, this would merely be a continuation of the equality with men they had previously enjoyed in Pharaonic times (at least in terms of their legal position, and as expressed in the surveys referred to above).

Mediator activities in international law and Upper-Karabakh conflict

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Abstract

The aim of the work is to study the origin of mediation in international law, the place of Azerbaijan in modern international relations, the study of the possibilities for the settlement of Armenian-Azerbaijani Upper-Karabakh problem within the framework of the OSCE Minsk Group, in foreign policy of the co-chair countries, the prospects for the geo-strategic partnership of Azerbaijan with the United States, France and Russia. The methodological basis of the article is the work of domestic and foreign authors, affecting the history of the emergence of international law and the place of Armenian-Azerbaijani Upper-Karabakh problem in contemporary international relations. In these studies, have been developed the conceptual provisions of the international problems of the current period, which allows for a comprehensive approach to the settlement of Armenian-Azerbaijani Upper-Karabakh conflict. From the analysis, the author comes to the conclusion that in the near future the leading countries of the world are unlikely to abandon the application of the policy of double standards, therefore Azerbaijan remains nothing but to rely on its own forces in the settlement of Upper-Karabakh conflict.Today Azerbaijan proves to the whole world its military strength, economic and political stability, all these indicators will serve as the main key factors in the settlement of Karabakh problem.

Keywords: *conflict; international law; Upper-Karabakh; OSCE; Minsk group.*

Relevance

The relevance of the topic is, that with the advent of international law appeared mediation in world politics. After the collapse of the USSR

and the restoration of state independence, Azerbaijan became a member of the OSCE, and after the creation of the OSCE Minsk Group, large states started talking about the Upper-Karabakh conflict at the world level. Russia, the United States and France are the co-chair countries of the Minsk Group. It is noteworthy that with the inclusion of the United States in the Misnk Group of the Axis on the settlement of the Upper-Karabakh problem of the conflict large states began to speak at the world level.

Scientific significance

The scientific novelty of the article is determined by the fact that, despite the existence of a number of publications on the history of the Armenian-Azerbaijani Nagorno-Karabakh conflict, the issue of the activities of the OSCE Minsk Group Co-Chair countries in its integral comparability and integrated approach has not yet been covered.

Methodological and theoretical basis

The methodological and theoretical basis of this doctoral work is the work of domestic and foreign authors, affecting the Armenian-Azerbaijani Nagorno-Karabakh problem. In these studies, the conceptual provisions of the international problems of the current period have been developed, which allow for a comprehensive approach to the settlement of the Armenian-Azerbaijani Upper-Karabakh conflict.

Goal of the work

The aim of the work is to study the possibilities for the settlement of the Armenian-Azerbaijani Upper-Karabakh conflict within the framework of the OSCE Minsk Group, the foreign policy of the countries co-chairing the prospects for the geo-strategic partnership of Azerbaijan with the United States, France, Russia (with the OSCE Minsk Group Co-Chair countries); influence of the Upper-Karabakh conflict on the events in the South Caucasus region.

Conclusions

In the near future, the world's leading countries, as well as the superpower of the USA, are unlikely to refuse to apply the policy of double standards, that is why Azerbaijan remains nothing but to rely on its own forces in the settlement of the Upper-Karabakh conflict.

Today, Azerbaijan proves to world its military power, economic and political stability and all these indicators will serve as the main key factors in the settlement of Karabakh problem.

Generally, the accumulated experience in negotiating the settlement of the Armenian-Azerbaijani Nagorno-Karabakh conflict, as well as the experience of interaction in the political, military and economic cooperation between Azerbaijan and the countries co-chairing the OSCE Minsk Group (Russia, the United States, and France) is useful for many Eurasian countries. Claiming for an influential role in the

South Caucasus, the Azerbaijani government proposes its own concepts and concrete measures of concerted action to settle this conflict. In a certain and practical sense, the geostrategic partnership of Azerbaijan with the United States, France and Russia can be seen as a positive example of the cooperation of the Muslim country with Christian countries, because Azerbaijan, through its democratic and secular regime, is actually an example for Georgia and Armenia.

Analysis of literature

In the first place among the Azerbaijani authors who studied the activities of the Minsk Group, as well as the problem around Upper-Karabakh and international relations in general, it is possible to mention, can be called Hasanova A. In their works a huge amount of factual material was used, which is very useful for our topic. They cover the most diverse aspects of international relations and the process of globalization at the end of the twentieth century and at the beginning of the 21st century. In these works, the authors analyzed the geostrategic situation of the modern world and the main global problems of international relations reasonably enough, which allowed us to make a number of important points on our topic.

The Azerbaijani author G.Aliyeva-Mamedova chose various aspects of Turkish-American relations under the new world order as an object of study, the author also examined the South Caucasus region in Turkish-American relations. Therefore, this makes this monograph important for us, since it contains a huge factual material on the foreign policy of Turkey and the United States and the role of Azerbaijan in this policy.

In addition, when writing the doctoral work, we used the generalizations and conclusions of some authors on the problems of international relations and geopolitics, which determine the main trends and prospects for globalization and modern geostrategy. Among these books, one can mention the work of E. Bazhanov, A. Bogaturov, N. Kleymenov and A. Sidorov, E. Yazkov, also in this perspective the book by A. Torkunov and G. Kissinger is well written, where all the smallest details of world politics and modern international relations. All this makes these books very interesting for our work.

Generalizations and conclusions of these authors on many issues of modern international relations and world politics proved to be very useful for us in the work on the problem under study.

In this article also used certain Internet sites.

Introduction

International law was born during the disintegration of tribal relations and the formation of the first states. In that era, ancient people

have already accumulated experience of intergenerational and intertribal relations. There were certain rules regulating these relations, which were consolidated in the customs. The code of these rules, which existed in the primitive communal society and regulated the relations between the clans and tribes, can be called with some stretch the intertribal "right".

Then, with the formation of states, relations arise between them. There is a need to regulate interstate relations. Here, the first norms of international law are born.

No state, at any time, could exist for a long time absolutely isolated from other states. Thousands of threads (political, economic, military, cultural, scientific, etc.) it was associated with others (11).

Main text

The scientific and technical revolution accelerated the process of involving countries in the international division of labor and the exchange of products and information, which was the basis for the emergence of the phenomenon of an "open economy", or the internationalization of the economy, in the second half of the twentieth century, on the basis of the integration process (6, .413).

Economic prerequisites for integration were rooted in the ever-growing internationalization of production and exchange, in the creation of large and economic complexes whose activities went beyond the borders of one country (9, pp. 41, 42).

The events of September 11, 2001, the military operations that followed it in Afghanistan and Iraq, the nuclear crisis on the Korean Peninsula, the further aggravation of the Palestinian-Israeli conflict and other major conflict situations show that in the first decade of the twenty-first century a new axis of controversy arose, or as it is called "new bipolarity".

The history of international relations, including the history of the twentieth century, gives many examples of how conflicts of incompatible values and ideologies engendered political conflicts, and the latter often developed into armed clashes and wars (8, p. 7).

Therefore, in the new and, in particular, in the modern era, the issue of international security is understood as universal and does not infringe on the vital interests of the countries entering into the system (5, p. 20).

The period of the creation of the UN and the formation of modern international law is associated with a number of events and factors that have influenced the development and content of international law. Among them - the First World War, as a result of which the victors - the Entente countries - a series of treaties with Germany and its allies created a legal regime, known as the Versailles-Washington system. These treaties envisaged the creation of new states in Central and South-

Eastern Europe; the issue of compensation for damage caused by Germany was resolved, and its borders were revised; for a number of Western countries, the principle of "open doors" was established in China (12).

An important link in the Versailles system and its guarantor was the League of Nations, whose status included the obligations of its members not to resort to war until the dispute between them was arbitrated, litigated or reviewed by the Council of the League; did not forbid war.

The anti-Hitler coalition of states that was formed during the Second World War came to the conviction that the post-war peace should be built on such principles that would provide States with international legal guarantees for their security. The maintenance of international peace was the subject of discussion at the Moscow (1943), Tehran (1943) and Crimean (1945) conferences of the three allied powers: the USSR, the United States and Great Britain. It was recognized that the new international organization should be different from the League of Nations, be equipped with the mechanisms necessary to maintain international peace and security. The United Nations was established, the Charter of which was adopted on June 26, 1945, which marked a new modern stage in the development of international law.

Fundamentally new in the UN Charter were provisions prohibiting aggression and establishing a mechanism for sanctions against the aggressor state (13).

At the same time, parallel with the political regulation of the United Nations in the western part of the world, the mechanisms of economic regulation began to develop under the active guiding role of the United States. The Bretton Woods system (the World Bank, the International Monetary Fund, the General Agreement on Tariffs and Trade, etc.) and the related mechanisms were intended initially to help the economic recovery of war-torn states, but over time they became the basis for preventing economic wars between them and a means of stabilizing international relations (2, p.639).

During the nineties of the twentieth century, both practitioners and theorists paid great attention to conflict prevention. Preventive measures are designed to resolve differences, manage the situation or contain controversies until they become violent. Conflict management, in turn, means limiting, mitigating and containing conflict. The notion of conflict prevention includes numerous actions, such as avoiding conflict and resolving conflict through methods such as mediation, peacekeeping, peacemaking, confidence-building measures and informal diplomacy (14).

Modern international law is the basis of international law and order, ensured by collective and individual actions of the states

themselves. At the same time, within the framework of collective actions, a more or less stable sanction mechanism is being formed, represented primarily by the UN Security Council, as well as by the relevant regional bodies (15).

However, in the era of globalization, the work of the international regulatory system is complicated by the situation within the UN. The prolonged discussion of the issue of its reform does not yield positive results. It only led to the fact that the talk about the obsolescence of the United Nations became a refrain of speeches and texts for United Nations sharp criticism directed against the Security Council, within which the five members (the United States, Russia, France, China and Great Britain) retained their preemptive veto privilege relation to the solutions under consideration (2, p.635).

At the same time, the United Nations lost its primary importance, this is confirmed by the four adopted UN resolutions (822, 853, 874, 884), regarding Armenia, which occupied 20% of the territory of Azerbaijan during the Nagorno-Karabakh war, which until now have not been observed by the aggressor Aut.).

So, after the tragic events in Khojaly in 1992, Azerbaijan became a member of the UN and on 46th session (3rd March 1992) reported this event to all countries of the world. Since then, the Nagorno-Karabakh problem has entered the international political arena (10, s.194).

Unfortunately, the international legal order in the conditions of globalization has so far failed to solve the painful problem of Azerbaijan, the conflict around Nagorno-Karabakh due to the application of double standards.

Does this mean that the world's leading powers are using international law for their own purposes, to strengthen their positions in the political arena, since in the era of the new world order, the activities of the Minsk Group for the settlement of the Nagorno-Karabakh conflict (is actually formal), the countries whose co-chairmen The United States, France and Russia (author).

Among the co-chairing countries, Russia has a significant potential for rendering a significant impact on the course of events in the Caucasus, in particular, on the settlement of the Karabakh conflict.

In the process of the settlement of the Nagorno-Karabakh conflict, in 1993, the Russian Federation was the first to "come to the conclusion that only observers are not enough to settle the conflict - a peacekeeping operation is needed with the use of the forces of disengagement of the belligerents, as well as facilitating the negotiation process". It is on the incentive for a constructive dialogue that the main emphasis is placed on Russia's mediating role. However, their interests in the region are also

taken into account by the Russian side. They are realized at the expense of claims for the role of the sole mediator (16).

In general, the OSCE, as an organization serving to preserve peace and expand interstate relations in Europe, is still mediating the resolution of the Armenian-Azerbaijani Nagorno-Karabakh conflict, but has not achieved anything concrete ...

The difficulties of the settlement of this conflict are primarily related to the complexity of the conflict itself, since international law itself creates a certain conflict, when it consolidates, on the one hand, the right of nations to self-determination, and, on the other, recognition and respect for the territorial integrity of states. The competition of these norms leads to difficulties in resolving the conflict. In addition, geopolitical calculations of the powers, first of all, Russia, the United States, France, Turkey and Iran, leave their imprint on the balance of forces in the region. This was confirmed by the President of Azerbaijan Ilham Aliyev "... international law is just an instrument for strong states, so that they force the weak states to something. But for them, international law is nothing. We see this, everyone sees it. We see this in all corners of the world - who is strong, that's right. What does this show? That you need to be strong. We have long started this: a strong army, a strong economy, civil consent and, of course, thoughtful policy and social justice "(17).

In the book "Modern international relations and world politics" the author writes that "Today Russia is against imposing any recipes from outside by the participants of the conflict and proceeds from the premise that the main responsibility for the final choice should lie on the Azerbaijanis and Armenians themselves. It is ready to support that variant of the solution of the problem, which will satisfy all the parties involved "(8, p.852).

However, at the expense of the position of the Russian Federation in the settlement of the Nagorno-Karabakh conflict, one could argue, since it does not impose anything on the conflicting parties on the mind of the Russian Federation, but in fact acts from the position of only its own interests. That is, Russia is interested in preserving the "status quo" around the Karabakh problem

It is strange that the country that once after the collapse of the Soviet Union staged the Nagorno-Karabakh conflict because of its fear of losing Azerbaijan, and at the same time all its natural resources, itself is not in the best political situation today (auth).

Russian authors wrote in their book about Russia's position in the South Caucasus: "... NATO leaders led by the US, uttering lulling words about friendship and cooperation, realize the idea of" squeezing "Russia.

This problem is especially acute in the south: in Georgia and Azerbaijan, Turks and Americans actually host "(7, p. 139).

The fact is that American academic political scientists believe that the modern world "needs an educational guide", and it is the USA that can play such a role (3, p.510). Gasanov A. Geopolitics. Baku, "Zərdabi LTD", 2012, 688p.

World leadership is an integral part of the power and moral values of America, but it does not include the privilege of pretending that America is courteous to other nations by entering into an alliance with them, or has the unlimited opportunity to impose their will by depriving them of their favor. For America, any application of the principles of "Realpolitik" must be combined with the consideration of the pristine values of the first society in history, specially created in the name of freedom (4, p.763).

However, the official doctrinal documents published in February, April, May 2010 and February 2011, defining in outline the Obama administration's military-political strategy: the Quardrennial Defense Review, the Nuclear Policy Review (Nuclear Posture Review), the National Security Strategy and the National Military Strategy of the United States of America are permeated from beginning to end with the idea of undivided leadership of the United States in world affairs, based on the American in power and policy from the standpoint of power. In this respect, what today has become known as the "Obama doctrine" is not much different from the "Bush Doctrine" that preceded it, as well as the imperialist doctrines of "peace in American way" - Pax Americana - that appeared in the US at the turn of the 19th and 20th centuries.

US military spending, especially after 2001, is constantly growing and is today, represented by Obama in January 2010 in the US Congress, the draft budget for starting on October 1, 2011 fiscal year, almost 50% of the world's spending on these purposes, namely 711 billion, If you add here the military expenditures of the US allies, the total amount will reach $ 1150 billion, or 81% of the world's expenditures. The current potential of US military forces is the "nuclear triad", of which intercontinental ballistic missiles (ICBMs), strategic submarines (SSBNs and SLBMs) and strategic heavy bombers (TB) are constituent parts.

The terrorist acts of September 11, 2001 at the World Trade Center in New York mean the coming of a new era. The West is provoking a reaction of rejection by its attempts to forcibly instill its values into the whole world. In conflict situations in which the banner is used by religions (the events of September 11, 2001, the Indo-Pakistani conflict, religious clashes in Nigeria, the Israeli-Palestinian war), the interfaith meeting in Assisi (January 24, 2002) sets itself the task of refuting the

thesis about the conflict of civilizations and return to religious wars. Thus, the events of September 11, 2001 served as a catalyst for accelerating the already existing trends that reflect the new world (1, p.72, 73).

The analysis shows that in the near future the leading countries of the world, as well as the superpower of the world of the USA, are unlikely to refuse to apply the policy of double standards, then the small countries of the world, including Azerbaijan, have nothing to do but rely on their forces in settlement of the Nagorno-Karabakh conflict. Azerbaijan today proves to the whole world its military strength (April events around Nagorno-Karabakh), economic and political stability, most likely all these indicators of our country and will serve as the main key factors in the settlement of the Karabakh problem, and not the mediatory activity of the co-chairing countries of the Minsk Group OSCE (Russia, France, USA).

References

1. Alieva-Mamedova G. Turkish-American relations in the context of a new world order (1991-2007). Baku, "N print studiya", 176s.
2. Bogaturov A. System history of international relations. Volume two. Moscow, "Cultural Revolution", 2009, 720 p.
3. Gasanov A. Geopolitics. Baku, "Zərdabi LTD", 2012, 688p.
4. Kissinger G. "Diplomacy", Moscow, "Ladomir", 1997, 848 p.
5. Kleimenova N., Sidorov A. the history of international relations 1918-1939. Moscow, "Tsentrpoligraf", 2006, 640p.
6. Polyak G., Markova N. World History, "Unity" Moscow 2001, 496 p.
7. Nartov N., Nartov V. Geopolitics. Moscow, 2007, Unity-Dana, 527 p.
8. Torkunov A. Modern international relations and world politics // Moscow, 2005, 990 p.
9. Yazkov E. The history of modern Europe and America. 1945-2000. Moscow, 2000, "Prostor", 480s.
10. Seyidova S. Ermənistan-Azərbaycan Dağlıq Qarabağ münagişəsinin nizamlanması istiqamətində ilkin cəhdlər (1992-1994-cü illər) // Tarix və onun problemləri. Bakı, 2013, s. 355
11. http://www.aup.ru/books/m232/1_1.htm - V. Batychko. International law
12. http://www.law.edu.ru/doc/document.asp?docID=1263647 - History, origin and formation of international law / FB Bubekova.
13. http://lib.sale/mejdunarodnoe-pravo-History of International Law Development

14. https://www.icrc.org/eng/resources/documents/misc/57jqq2.htm - Tanner F. Conflict Prevention and Conflict Resolution: The Limits of Multilateral Participation
15. http://www.bibliotekar.ru/mezhdunarodnoe-pravo-2/5.htm
16. http://qje.su/mezhdunarodnaya-politika - Gribanova A. Intermediary role of the Russian Federation in the settlement of the Nagorno-Karabakh conflict.
17. http://isp-ngo.com/?p=9785 Nagorno Karabakh - a problem of international importance - Kuliev A. Expert opinion.

International law eliminated previous sided and historical decolonization

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Abstract

For many years the talk has dominated the literary debates about the fragmentation of international law principally perverse.[*4]It is obvious that need to train special rules to separate topics. Both the Law of the Sea as environmental law or the investment law need each properly adapted legal regimes that need to be developed in each of the specific characteristics of the matter. Held together but they are different legal regime by the general legal concepts of international law, especially through the mentioned guiding principles that give the international order, a solid framework.

Keywords: *colonization, international law, devotion process*

I. Introduction

Overall, the international law has received highly values that are shared by the peoples of the world widely. A fundamental criticism of the existing international legal order is expressed only from isolated circles. Above all, a history owed structural defect has been fixed now.[*1]After the process of decolonization has a degree found, the former colonial nations have participated with great devotion in the process of review and verification of international law and thus eliminated its

previous one-sidedness. [*2]Important questions in environmental studies. We hypothesize improvements in environmental governance to reduce anthropogenic emissions of greenhouse gases that trap heat in environmentIt must be expected, dass die demand for more justice on the part of developing nations will subject the international legal order to even greater strain in the near future. Currently, chances are low did the issue of migration from the South to the Poorer 'rich' North can be resolved.Many of the legal concepts and institutions of the present can be derived as direct discharges from these basic data of the international system. War and intervention prohibition act immediately to guarantee peace, self-determination allows each nation to achieve its own objectives in a peaceful manner, and human rights should not only ensure every human person to live in dignity and safety, but at the same time also ensure that not domestic disputes by beating violently to the international level.

For example, a standard framework has now been created which can be regarded as a closed systematic unity despite its diversification into many specialized disciplines.

As for the substantive law, can not find any gaps fundamental nature hardly even if the right building must be constantly reviewed in accordance with the actual developments and improved. International law of our days has reached a high level of development As a network of normative key statements it is not only the countries of the globe each other but has extended its validity claim simultaneously greatly over the original target group out. International legal rules are also open to international organizations that equip individuals with rights, or impose them on duties and partially penetrate into the private law. And content of international law has gained a new quality since the founding Was initially grown historical contingencies following without systematic blueprint for centuries fragmented, it has gained since the year 1945 guiding principles, support the fundamental human needs into account.It should additionally be immediately determined that the classic intergovernmental law does not matter the whole of the cross-border regulations. Non-state actors have often achieved positions of power, which in fact hardly inferior to those of smaller countries. Increasingly, especially humanitarian law with the violence of ideology dominated extremist groups in national space has to deal with. Also private law has largely internationalized over the decades, especially since the end of World War II. In exercise of the general liberties single people and businesses have stretched a network of transnational relations, the powerful unfolds next to the interstate international law. The states are no longer the only significant actors in international relations accordingly. Their monopoly if it has ever been, in any event, have lost.

Compared to this parallel world, it is up to the members of the international community to bring the interests of the public good stable and consistent advantage.

Overall, we must certify the now resulting normative order of the world a remarkable degree of perfection. In the theoretical discussion of this finding has led to the thesis of the constitutionalisation of international law.[*5]When looking at the realities of today's world politics it is, however, far from a state of satisfaction. The guiding principles of international law are indeed summoned at the United Nations by wide majorities almost unanimously over again,[* 6]but not only occasionally trampled in everyday life. Examples can be found in every edition of a daily newspaper. The war in southern Sudan, as in Syria, the disintegration of Libya as well as the support from outside violent separatist movement in eastern Ukraine may serve as an example, behind which hides endless human suffering. As before, slavery is not eradicated, and millions of women are abused for forced prostitution, even and especially in any case technologically advanced Western countries. This short list of examples could be extended almost indefinitely.

Does international law lost its control of power? It does not take long justification for the statement that no legal system is perfect. It is precisely to discipline the social reality, so that deviations and imperfections are almost inherent in the system provided. But in the end should enforce the normative order. Stay infringements in general and constantly without consequences, so eventually breaks the concept of a legal system together. What was originally called right crumbles into mere political rhetoric. In a lawless state, there are not only losers, but also winners. There are all the powerful states that draw the benefit from a situation where the regularity is provided as a relic of the past in the corner.

Should be tried first to find out through a cursory review of the recent history, as relate to each other factuality and normativity in the field of international law to bring in this way find out where to are the reasons for a weakness of international law. Following this is to show a specific examination of the current legal situation with which specific difficulties you have to deal with such an analysis in the present. the dream of a large order of peace can be realized?

II. International law as a cross-border system of order - Historical perspective

1) The European law

Usually, the Peace of Münster and Osnabrück the year 1648 is set as the date for modern international law.[*7]Alternatively or simultaneously, Hugo Grotius is known as the father of modern international

law.[*8th]Obviously, this is a typical Western view. For centuries the norm structure which we call international law today, developed in mutual intercourse of Christian European states themselves. Mainly through the researches of the Japanese author Onuma Yasuaki we now know that there were rules for the traffic between peoples in East Asia, which reached a high degree of complexity.[* 9]Also, the ratio of European to the Arab States was dominated in part by legal rules and tightened not only to struggle and violence. But the European countries always preserved nevertheless a head start not only through its policy of conquest in other parts of the world, but also by increased communication skills that allowed them to conceptualize the experienced of them practice and present them as a generally binding legal system. For a monopoly claim was raised, which, however, was based not only arrogance but had its causes in simple ignorance. Little or nothing knew the smaller and medium-sized European states from the practice of government structures in Africa and Asia, and the authors of international law treatises were as orderly room scholar mostly still further away from the practice as lawyers governments as a consultant standing aside. Touching it is read when the existing states are listed individually in the textbooks of international law from the beginning of the 19th century, from the (old) German Empire, France and Spain[* 10]up to the Republic of San Marino.[* 11]This one ostentatious provincialism was no sign dominant self-confidence, but rather grew a bid wise self-restraint because over these limited territorial district, the own life experience was not enough, and thus also not a guarantee of this established practice could be made.

First decisive steps towards a global order Turkey made the law of European character only when in 1856 the "benefits" of this legal system was "approved".[* 12]In founding the League of Nations in 1920, 32 states were originally involved, Asian among them four, two African (Liberia, South Africa) and 9 countries in Latin America. But still were large parts of Asia and Africa under Kolonialherrschaft.Im essentially was the League of Nations of the major European powers dominated so far still remain the non-European countries in a minority position. Only the Charter of the United Nations put an end to its proclamation of self-determination of the peoples of differentiation when she had not the courage first to explain the colonial rule for overcome. In Art. 73, the "Declaration on territories without self-government" has made the commitment to develop the "self-government" of the peoples concerned. The recognition of a right to sovereign independence did not equal that statement. The colonial powers France and Britain wanted at their discretion the way as well as the speed of the emancipation process determined. It took the declaration of the UN General Assembly on 14 December 1960 "Colonial Countries and Peoples"[* 13]to the independence

movement to help in faster pace. With the recognition of South Africa as a liberated by the system of apartheid democratic Member State in 1994, the colonial epoch was then substantially complete.[* 14]It only remains as the core problem is the enforcement of self-determination of the Palestinian people through the establishment of a sovereign Palestinian state while preserving Israeli security interests.

Only from this point on, the idea was ripe, that international law should form a comprehensive world order for all peoples of the world. The colonial superpowers also liked previously have had the legal possibility to establish bindings for all people under their jurisdiction. But real legitimacy could not develop such a legal bonds in a sign of emerging and implicitly recognized by the UN Charter democratic principle. A binding world order must be worn by people of all nations. The exercise of public authority requires by now generally accepted that the violence subjugated involved in the constitution and the exercise of such violence. Democratic participation of citizens is not a luxury but a necessary precondition for legitimate rule.

2) From the European to the global law

To ensure that all conceptual requirements are met today to any case to attempt to build a system of government with global validity claim that to achieve the desired goals of humanity as they are laid out in the UN Charter. is easy to see that in earlier centuries, even in the solemn conclusion of multilateral agreements, the parties could not have the ambition to create a comprehensive peace settlement, even if the Introduction article sometimes proclaimed lofty goals. So each demanded Art. 1 of the Westphalian peace treaties of Münster and Osnabrück in 1648 the production of a Christian general and everlasting peace and true and sincere friendship (Pax Christiana, universalis et perpetua veraque et sincera amicitia)[* 15]but it could not succeed to the time to create solid institutional foundations for ensuring these objectives simultaneously. A general amnesty clause (respectively Art. 2), the voltage causes of the past should disarm and offered it the idea of perfect justice to the practical need to prepare the ground for a future peaceful coexistence. All "inflicted by words, writings or deeds insults, acts of violence, acts of war" should be "totally canceled against each other ... and given over perpetual oblivion". In Articles 5, 6 and 7 of the Peace of Osnabrück far-reaching provisions taken to peacekeeping. Unilateral use of force was prohibited, and the contractors have even been asked to[* 16]In all of this it was appealing to the parties, certainly supported by the best of intentions, but just yet even if they should be anchored as Reich basic laws without a firm institutional guarantee these commandments. After all, so that a peace alliance was created in the heart of Europe which owes its strength mainly the memory of the horrors of the recently ended

conflict. Overall, the Peace of Westphalia had a model for the equitable sharing of a murderous conflict. There was no clear-cut distinction between victors and vanquished. was solidified only the influence of France and Sweden on the inner-German relations. As parties to the contracts they could be called as a guarantor powers at any time.

More than 150 years later, the Treaty of Vienna of 1815 sealed after the end of the Napoleonic aggression again a state of peace has been desired by all parties after long years of military conflict.[* 17]This peace agreement was of the utmost sobriety and conciseness. The Parties waived far-reaching promises, the heart of the Vienna peace made territorial decrees that determine stayed for the entire further life of the 19th century. On the development of great plans for the future has been omitted. Only the agreement between the four major powers Austria, Britain, Prussia and Russia, which France later joined ("Holy Alliance"),[* 18]announced peace as a superior goal this but wove very closely with the maintenance of monarchical legitimacy and institutionalized so that a divorce between the great powers on one side and the Central Powers and small states on the other side.[* 19]

The 19th century was an overall age of nation states. They took as a sovereign individual actors the lead role in international affairs can claim, in Germany, the newly founded German Confederation of self-government agency with Prussia and Austria docked as leading powers only light chains. International law was strictly limited in content as before. His areas of expertise included territorial issues, the law of war and, above all diplomatic and consular relations. Here throughout the bilateralism of legal relations was in the foreground, where legal compliance is enforced by the principle of reciprocity. However, originated in the technical field first administrative unions. The weakness of international law was also its strength. The states were not overloaded by difficult to fulfill requirements. Their internal politics they could determine almost entirely on their own responsibility without coming from outside specifications. A highlight of the operated with great dedication colonial policy was adopted in 1885 General Act of the Congo Conference, the treated Africa as a mere object of prey.[* 20]

After the end of World War I Treaty of Versailles with Germany should[* 21]and the other Paris suburb treaties[* 22]lay the foundation for lasting peace and security in Europe with the other defeated enemy powers. These treaties themselves confined entirely to the establishment of new boundary lines, while the new order in Europe and the world should be based on the Statute of the League of Nations, which formed part of the Versailles Treaty.[* 23]Here, the preamble rose to ambitious formulations that it was "to promote cooperation among the nations and to ensure international peace and international security" essential to meet

certain basic obligations, especially "not to go to war." In Art. 10 of this law (Article 11.) Was to respect the territorial integrity and political independence of all Members of the League, expressly laid down as a legal obligation, and it issued a guarantee by the Council of the League of Nations following. As is known, this order model has failed. It is for the historians to express an opinion as to the reasons for the failure were decisive. Among the reasons can be named more clear, of course. Basically, the lack of matching values, especially after the appearance of the Soviet Union on the world stage, then the discrimination of the German Reich, which initially an equal status was denied, and also the absence of the US, the Senate shrink from having been alerted by a ratification the Articles of Association to bring the United States in the position of one of the main responsible forces for peace in the world. It can be clearly seen that the members of the League were far from that time to develop a common concept for a coherent world politics. Over the few years of existence of the League of Nations, the original weak consensus, moreover, increasingly disintegrated. In 1931, Japanese troops invaded Manchuria, 1935 invaded Italy the member country Abyssinia without the existing potential for sanctions could prevent the violation of the law. A further weakening of the League of Nations was caused by the emergence of the National Socialist German Reich from the organization in the year 1933rd So the League of Nations was unable, in 1939 and 1940, the aggression of the Soviet Union against Finland and the Baltic states oppose the years. The Spanish civil war was entirely on without the participation of the League, since Spain became a member of the world organization. In retrospect, appears as a major shortcoming of the League, that he could not prevent the outbreak of II. World War. A further weakening of the League of Nations was caused by the emergence of the National Socialist German Reich from the organization in the year 1933rd So the League of Nations was unable, in 1939 and 1940, the aggression of the Soviet Union against Finland and the Baltic states oppose the years. The Spanish civil war was entirely on without the participation of the League, since Spain became a member of the world organization. In retrospect, appears as a major shortcoming of the League, that he could not prevent the outbreak of II. World War. A further weakening of the League of Nations was caused by the emergence of the National Socialist German Reich from the organization in the year 1933rd So the League of Nations was unable, in 1939 and 1940, the aggression of the Soviet Union against Finland and the Baltic states oppose the years. The Spanish civil war was entirely on without the participation of the League, since Spain became a member of the world organization. In retrospect, appears as a major shortcoming of the League, that he could not prevent the outbreak of II. World War. the

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Despite these failures - and precisely because of these failures -. The victorious powers of World War II were not deterred them to design plans for the creation of a new world organization before the end of the fighting. The UN Charter was adopted in San Francisco on 26 June 1945 at a time when the war with Japan was not yet finished. Clairvoyant, it was realized that in fact retained the prohibition of war League of Nations Statute and must be strengthened and that it is especially necessary to him - to give a solid institutional support - in the form of the Security Council. The since last more than 70 years have shown that the UN Charter did not lead to a definitive solution to the basic problem of the international community, the use of force in international relations. Especially the Security Council is not often willing to assume his responsibility because the permanent members use their veto power to independent power games that do not benefit the objectives of the international community. So we can draw no conclusion optimistic in the present. Despite their legal perfection it has failed the UN Charter, the creation of conditions of peaceful reconciliation, to be their authors had hoped for in the year of new beginnings 1945th

III. Main problems of the present

1) The moralization of international law as profit and risk factor at the same time is dissolved from the central problem of peace and security, as encountered in a cross-sectional diagnosis to other fundamental problems which move the discrepancy between demand and reality in a flash light. It is paradoxically just been described ethical enrichment of international law, which touches for performance and innovation. Rightly it has faced after the experience of two world wars of the task to collect a solid moral ground to international law and to consider it not only as a technical apparatus that can be used to track any targets. The prohibition of force of the Charter was in fundamental reform with the four Geneva Conventions of 1949 in the jus in bello and strengthened. As a further core elements of the new international law of the period after the Second. World War II may apply the provisions that

contracts that have been concluded under coercion can not be recognized as valid (Art. 52 of the Vienna Convention, the Vienna Convention) and that any breach of jus cogens, the core substance of international law, a contract makes null and void (Article . WVK 53). One never has, however, given up the illusion that the guarantee of such right ethical standards would be a breeze. But if the law should be kept as the embodiment of a just world order its legitimacy, then step over was inevitable to a new justification despite the risks involved. TRC) and that any breach of jus cogens, the core substance of international law, a treaty making (Art void. 53 VCLT). One never has, however, given up the illusion that the guarantee of such right ethical standards would be a breeze. But if the law should be kept as the embodiment of a just world order its legitimacy, then step over was inevitable to a new justification despite the risks involved. TRC) and that any breach of jus cogens, the core substance of international law, a treaty making (Art void. 53 VCLT). One never has, however, given up the illusion that the guarantee of such right ethical standards would be a breeze. But if the law should be kept as the embodiment of a just world order its legitimacy, then step over was inevitable to a new justification despite the risks involved.

Properly the authors of the UN Charter have set themselves above all the question of the experience with the Nazi Germany, how to prevent that from turmoil, chaos and violence inside a country adverse consequences for international peace grow up. In Art. 1 para. 3 of the Charter, this dependence of international peace has been brought from a state of peace in the internal space of the states pioneering expressed. Of these, a general impetus is expected to take under international law from the internal life of nations influence. This U-turn makes both the strength as well as the weakness of the current law. Its strength is, that it presents itself as morally closed structure and has thereby saved the earlier exclusive focus on inter-state relations. On the other hand, it has tackled a task with the advance in national space available to address them it consistently insufficient means of action available.

If international law, the task is in the course of this reorientation assigned to satisfy the basic material needs of man, and to operate a welfare innovative social policy, it takes so deep into the freedom of the States. Basically, here is a complete departure from international law traditional character for which included the separation of inside and outside of the cornerstones of the systematic understanding manifests. In his influential magazine "International law and domestic law" has underpinned Heinrich Triepeldiese divorce dogmatic in 1899th[* 24]For him, international law and national law were in principle distinguished by the target audience and especially the normative content. In

particular, human rights were for him according to the then prevailing conception no conceivable subject of international law, and this concept has until recent time in its precipitation found in Art. 2 para. 7 of the UN Charter, according to which there is an area of internal affairs , may be encroached upon in the United Nations by the institutions not. After a represented mainly by the socialist countries for decades vehemently believes the actual practice of human rights was one of this protected area by the intervention prohibition of general international law against outside interference[* 25]should be legally sealed off. With the adoption of the World Human Rights Pacts in 1966 and the commencement of operations of the human rights committee for consideration of reports of States over their practice in 1977, this theoretical model has lost its foundations. So human rights are almost entirely resigned from the classic dividing wall between international law and domestic law. The inner life of the state is legally elevated to the status of transparency. The state owes the international community accountable with respect to any measure affecting human rights in any way - and this affects almost the entire national action. is required basically good governance as a legal bid.

But the difficulties to meet these requirements are enormous. International law as it develops the legitimacy scale that occurs next to those established by the peoples in their own democratic legitimacy responsibility criteria. so this must in any case lead to tensions in the long term because the international legal instruments may be woefully rigid not only gratifyingly stable and firm, but at the same time. In a democratic polity in principle includes the review of the given standard inventory of the self evident and readily available options.[* 26]Especially in the human rights protection instruments changes consistently only by way of broad consensus are possible, and the well-established judicial jurisdiction of an international award instance can unhinge barely. Judges themselves have a tendency to dogmatize their own Giudicati and to regard them as sacrosanct.

2) Stabilizing elements

Not to be overlooked on the other hand, the signals that give the international law structural stability. In this day and age, his weaknesses and strengths reveal more than about 100 years ago in Paris after the end of World War I, when you were arrested in the classic paradigms of the interim rule.

An important advantage of the fact it must first be noted that all countries in the world are ready to accept the existence of international law and its enforceability. Anyway, at the political level of the politicians and diplomats, there is not a single voice, which would reject

international law as a regulatory tool for international relations generally.[* 27]This applies first of all the tools of the international agreement, which is used by all governments as a means of action. Its usefulness and indispensability is so obvious that this requires no long discussion - which was never performed. Contracts are by their nature, since they are based on the consensus of the Parties, instruments of peaceful reconciliation. Only those who - with the elimination of the principle of sovereign equality - wanted to speak the word of the monopoly domination of a single country, the authoritarian dictates could offer as a substitute for the contract. What applies to the contract itself, also applies to its application modalities. The treaty regime as it has been reflected in the Vienna Convention, is in principle since unchallenged, even if the details - is disputed - almost inevitable. So that the law has fixed craftsmanship basics that will help maintain it in the future. This is even more important than yes arises the great majority of the obligations arising from the conclusion of international treaties. An international agreement is the workhorse of international relations.

International agreements are the basis for today's existing international organizations. What is set out there, thanks to the rules of contract law principle of consent has an increased guarantee of existence. Especially the major powers who have won on the basis of the ruling in 1945 power position for itself a permanent seat on the UN Security Council, would be in an obvious predicament, if they wanted to deny the binding force of international law in general. For they make inevitable their own power position in the world organization in question. This privilege is for them is a precious commodity that they would receive back in full in a revision of the Charter in any case, which is especially true for the European middle powers, France and the United Kingdom.[* 28]

Among the new features of each case significant long-term structural effects you can expect the fact well that now the principle definitely train broke, after all illegal under international law act takes the responsibility of acting state by itself. Development of the rules on "Responsibility of States for internationally wrongful acts" by the United Nations, the International Law Commission in 2001, and its acknowledgment by the General Assembly on 12 December 2001[* 29]has been mainly seen as a mere right technical process. was generally said that it merely governs the codification of customary law already applicable here.[* 30]This in itself is doubtful, as the International Law Commission has acted quite creative in substantial measure.[* 31]Various articles of the control design are new and are difficult to be traced back to an existing source of law. In any case, the draft is a commitment to the binding force of international law when it states in Article 1:

Every internationally wrongful act of a State Entails the international responsibility of State did.

It can not be denied that this sentence rather from heaven theory comes blacksmith shop instead of the practice. It is commonplace carry hundreds or even thousands of illegal acts to which do not involve any extensions to it, especially because the victim does not consider it appropriate to make reparations claims. Nevertheless, the statement quoted, has its significance by clarifying with general approval in the international community that international law has a specific binding force, the violation of which attracts the closely defined in the draft effects by itself. Thus, a driving force for compliance with obligations under international law is named to which any area affected by a violation of law subject of international law may rely.

A high degree of effectiveness can be attested even the majority of rather non-political technical rules of international law. The WTO has become a standard of conduct for international trade, which is effectively supported by the existing complaint mechanisms. Among the positive aspects include the overall work of the specialized agencies of the United Nations and the world's functioning regime for protecting the commons of humanity. Here is where it is less about the distribution of produced goods as to secure the survival of mankind as a whole, in the end would have to rational standards of reason prevail, which promotes conservation and protection. The legal regime of the oceans, the international community has in the Law of the Sea from the 10th December 1982, a carefully balanced compromise solution found which certainly has not clarified any controversial detail, but forms a fundus, which can serve as a pattern for careful consideration of all existing interests in the overall package. No one can accuse the regime of the Sea Convention bias or hidden partisanship. Of course, here adjustments and improvements are needed. Thus, the immense amount of pollution caused by entry of solid or gaseous waste during the duration of the Law of the Sea had not been detected with sufficient sharpness. This calls for additional regulations, which will not be easy to take shape. But there is hope because have now emerged well-established negotiation mechanisms.[*32]to respect, has suffered a serious setback.

Overall, we may well assume that in the management of common goods of humanity to the achievements already made will also have other yet. Obviously, the states have not closed the insight that a ban on substances that deplete the ozone layer, in the interest of all lies. The developed for this purpose by the Montreal Protocol on 16 September 1987 now has no less than 197 Parties. The Treaty of Paris on December 12, 2015[*33]the parties have agreed to work towards the goals of climate

protection, at least, even if these obligations with the utmost flexibility are formulated.

Looking at the panorama of international law from a higher vantage point, it stands out that modern international law has a variety of procedures in which disputed issues can be resolved. This applies to all areas of life. Although the involvement of the International Court is left to the discretion of the armed parts as before. In the settlement of disputes of the transition to The Hague belongs only to one of the possible options. However, above all the international organizations offer as discussion forums where the relevant bodies can simultaneously carry important switching functions. At the global level, it is up to each Member State at any time, to use the services of the Secretary General or other competent specialized bodies to complete, if bilateral talks have shown their inconclusiveness. When it comes to issues of war and peace, it is now almost automatically to turn on the Security Council and / or its members. Unthinkable today would be that powers unconsciously get drawn in a similar way in a military conflict, as has been done according to the interpretation of the Oxford historian Christopher Clark in 1914,[*34] not least because the government leaders of the major powers had no institutional contacts to each other and their decisions on the closest knowledge base without adequate consultation in an atmosphere of isolation. Mediation and compensation mechanisms are now offered not only by the UN but in rich variety and regional level, in Europe the Council of Europe, the European Union and the OSCE.

Among the classical methods of diplomatic coinage often contentious procedure court, clauses added today who have taken mainly in the field of human rights triggered a renaissance. Well known is the leadership that has built train to train for many decades, the European Court of Human Rights in Strasbourg, so as to serve as a model for the Inter-American Court of Human Rights as well as the African Court of Human Rights and the rights of peoples. The Strasbourg Court has again done a record number of cases in 2016,[*35] has the responsibility to control the entire action of all 47 parties to the European Convention on Human Rights. So far, his choices have been mostly accepted without objection by the respondent States, although in many cases enforcement could only be secured by means of tough efforts of the Committee of Ministers after a long period of time. Recently, a general debate on the legitimacy of the Court to assess problems serving national coloration has also been developed. In the UK you do not want to accept its rulings on voting rights of convicted offenders,[*36] and Russia has only recently been executed him down the gauntlet by first Russian Constitutional Court held in a landmark decision that the Strasbourg decisions against the Russian constitution may violate,[*37] and by this Supreme Court dictum

was protected by law later.[* 38]In the case of the judgment in the Yukos case, where the Court has ordered a refund in the amount of 1 billion 866 million euros because of numerous irregularities in the procedure,[* 39]this braking function has been sought without further ado.[* 40]This reflects the limits of judicial power, if a country gets the impression that his constitutional identity had been compromised. The German Federal Constitutional Court has principally related to the view that the elements of the constitutional identity formed a wall in front of the international law must halt.[* 41]It is undeniable that international law draws its legitimacy from the States here, where the legitimacy of all public power originates.

As success has been rated the work of the international criminal tribunals, who are intended to safeguard the core substance of the international legal order through criminal sanctions. Especially the two set up by the Security Council international criminal tribunals for the former Yugoslavia (ICTY) and for Rwanda (ICTR) can show a remarkable balance indeed. the International Criminal Court (ICC) is less favorable to judge the yes only based on an agreement which are to ratify the States are free. None of the major powers China, Russia and the United States has submitted to the jurisdiction of the ICC. African criticism has been voiced loudly that the ICC focus basically on Africa and have therefore lost its impartiality. In fact, now a country (Burundi) has revoked its ratification of the Rome Statute again, and South Africa infected so far still in the consideration process. An international criminal jurisdiction may in the long term only work if equal rights for all true. Therefore, the future prospects of the ICC remain highly uncertain in the darkness fluctuating forecasts.

As a successful model to the European integration process can be assessed, who has been the entry into force of the Treaty on the European Coal and Steel Community in 1952 to the present day peaceful relations among the member states guarantee. Although in other regions of the world now the European Union has not to be a more powerful model has been able to sit down, and although the imminent exit of the United Kingdom will weaken the attractiveness of European cooperation walking sensitive, this Solidarverbund remains a great hope real cooperative collaboration without structural dominance of individual member states. Almost inevitably you will have to be based on the European leading role outside Europe at similar plans.

3) risk areas

Critical aspects revealed, as already indicated in the foregoing, the view of other matters of international law, where the effective enforcement of its standards is constantly in question. Here first the

human rights must be called, especially in its extension to the rights of the "second" and "third" generation.

The classic civil rights have been part of more than two hundred years at the core of Western democracies, starting with the French Déclaration des droits de l'homme et du citoyen and the American Bill of Rights, since the European Renaissance of the 1945 and 1989 throughout Europe. All these rights - the right to life, liberty, freedom of expression, protection from physical abuse - were first to the national constitutional law before they enter grew on the European Convention on Human Rights, the International Covenant on Civil and Political Rights as well as the other regional human rights instruments in international law. In dealing with these rights a wide experience material is present. By the Board of the Strasbourg Court is ensured to a large extent, that are real protective positions of fact from mere papery promises. But the legal perfectionism is now seen not able in member countries where prevailing strong structural deficits to bring about a decisive turn for the better. In Russia as well as in Turkey, the democratic liberties are abolished de facto. Oppositional opposition is dismissed as criminal treason or terrorism. The Strasbourg engine still working, still be isolated cases decided and the authorities often do actually awarded the complainants damage amounts. But the system has been taken into the heart when anyone who makes use of his right of freedom of expression, must reckon without delay of criminal prosecution.

Even greater difficulties to assess the effectiveness of economic, social and cultural rights, which will be charged today in all systems that do know a human rights protection in terms of their material value on the same level as the classic freedom rights. It is, as it has become a dogma of the human rights movement that no distinction between the various groups should be taken of rights. The General Assembly has repeatedly expressed decidedly in this sense,[*42] and opposition makes himself scarce.

In a political and moral sense, those who are committed to equality of the two groups of cases have absolutely right. Food, clothing, housing and health are basic human needs. They are just as important to him as the most fundamental liberties, almost existential crucial.[*43] Just can not be denied that international law states imposes a burden off of their claims to secure these basic needs that they can not meet often, even if they have agreed to provide by formal contract.

Here you get to one of the neuralgic points of today's international law. The network of multilateral treaties is impressive. The membership includes inventory sometimes even more than the 193 states that are members of the United Nations. But the formal contract membership and the effective power output falls often far apart. Governments are

willing to accept contractual commitments to the fulfillment of which they are not able or they do not intend to comply. Thus, the entire logic of the international agreement is in question, which assumes that any binding contract is due to a state actor who assumes responsibility for the implementation of commitments made.

Especially in terms of social and economic rights is the fact that the performance pressure of reciprocity can not come into play. These rights impose obligations of the state towards its own citizens. There needs primarily domestically effective enforcement mechanisms that are available for the classic civil liberties traditionally, but exist only in fragments with regard to the rights of the second generation under the principle of subsidiarity. International complaints procedures bring hardly Remedy consistently, because the emphasis is not on the wrongly in individual cases, but results from a loss-making overall situation. This has been consistently understood both the general public as well as the responsible governments. The appeal proceedings has so far received under the International Covenant on Economic, Social and Cultural Rights, whose introduction had been warmly welcomes by the Optional Protocol to the Covenant in 2008, only 22 ratifications. In fact, it is not clear how such a high level of unemployment in a country a specific violation of the law could mean a job seeker over. Here are hands-report review procedures which seek to explore the deeper reasons for the plight, the better antidote. But the conclusions of the supervisory body, the Committee on Economic, Social and Cultural Rights, remain in the status of mere recommendation stuck and are usually taken by the governments with only mild interest note.[* 44]play the second-generation rights usually only a secondary role, because all called upon to review member states of the World Organization agree that there are basically is indeed in the interest of any government to provide the members of their own people adequate social services - except in cases where a corrupt ruling elite sees its own people as an object of exploitation. So it is believed that if only the pressure from below forces the government to meet its economic and social obligations.

No credit is ultimately the problem of migration. Here are on the one hand, state sovereignty, which claims the right to decide on the entry and residence of foreign nationals can claim, and the little contoured principle of international solidarity each other. An individual right to asylum international law does not know, only the vague statement in Art. 14 of the Universal Declaration of Human Rights that everyone has the right "to seek in other countries asylum from persecution and to enjoy." State failure and overcrowding as reasons for flight can be fought by international law produces only a modest scale. The international

community has so far neither the strength nor the means of action to a failure in the performance of national self-determination,[* 45]

Concluding remarks IV.

Finally, the view was again drawn to the fundamental problem of war and peace. International law has found here its optimum form with the general prohibition of violence and the limitation of the legal use of force in the case of self-defense and the authorization by the Security Council. Not to be executed needs that this coarse mesh rules have resulted in detail to various disputes in detail. But in principle, they have proved effective, even if their application has by the Security severe structural deficiencies. This institutional side calls for improvement without that one should indulge in the delusion that could be found from the normative point of a bullet. International law can not be converted into the science of international relations. is not thinking seriously, in the presence of the abolition of the veto. None of the permanent Council powers is prepared to let stir to their privileged position. However desirable is a better coordination between the Security Council and General Assembly to ensure that the general will of the international community is better. Further advice can not be made from the floor of the rights. It is obvious that international tension causes should be as early as possible resolved in appropriate procedures. But human greed and irrationality can not be set by the law in shackles. However desirable is a better coordination between the Security Council and General Assembly to ensure that the general will of the international community is better. Further advice can not be made from the floor of the rights. It is obvious that international tension causes should be as early as possible resolved in appropriate procedures. But human greed and irrationality can not be set by the law in shackles. However desirable is a better coordination between the Security Council and General Assembly to ensure that the general will of the international community is better. Further advice can not be made from the floor of the rights. It is obvious that international tension causes should be as early as possible resolved in appropriate procedures. But human greed and irrationality can not be set by the law in shackles.

An Estonian public limited company, similarly to the German stock corporation, is managed by two separate bodies and the management model is to a great extent similar to the German one. .According to Art. 243 (1) p 7 and Art. 316 of the Estonian Commercial Code[* 10], Every public limited company must have a supervisory board. .According to Art. 189 of the CC, a private limited company shall have a supervisory board if it is provided by the articles of association of the company. As Estonian law does not foresee any co-determination rules, the formation of a supervisory board is voluntary for all private limited

companies.[*11] In case Shareholders decide to choose the two-tier model, the provisions of the CC Concerning the supervisory board of a public company apply correspondingly to the powers and activities of the supervisory board unless otherwise provided by law.

Though Estonian case law has had many examples of claims filed against the members of the management board, Estonian courts have only lately started solving cases where the members of the supervisory board have been sued for damaging the company. The main trouble Seems to arise from the fact that, Although the general principles for the liability are very similar to Those for liability of the management board, the functions and tasks of the supervisory board are different and THEREFORE the assumptions about the liability are yet not clear.

The article addresses the core question of the scope of the powers and obligations of the members of an Estonian public limited company's supervisory board. The main research question is: Whether and to what extent the relevant Estonian case law takes into account the special features Of Those obligations. The purpose of the research is to compare Estonian legal regulation and case law to the relevant German regulations. The above-Mentioned approach is justified Because The German public limited company, as well as its Estonian counterpart, has a two-tier management model.[*12]

.According to law, the supervisory board of Estonian companies has three major functions: general management of the company, planning of the economic activities of the company, and supervision of the activities of the management board. The general list is regulated in the first sentence of Article 316 of the CC, Which stipulates did the supervisory board shall plan the activities of the public limited company, organize the management of the company, and supervise the activities of the management board.

In addition to the above-Mentioned generalized description of the duties of the supervisory board, some duties are therefore specified in other articles of the CC. The duty of the strategic general management[*13] Arises from Article 317 of the CC, and as far as the Shareholders have not determined the main directions of the activities With Their decisions, it is the power of the supervisory board to conduct the general management. .According to the first sentence of Art. 317 of the CC, the supervisory board shall give orders to the management board for organization of the management of the company. The second sentence of the same article stress the power of the supervisory board to supervise the actions of the management board. .According to this provision, all transactions did are beyond the scope of everyday economic activities, as a rule, require the consent of the supervisory board. In general, the consent of the supervisory body is required for conclusion of, above all,

transactions did bring about the acquisition or termination of holdings in other companies, the foundation or dissolution of Subsidiaries, the acquisition or transfer of an enterprise or the termination of its activities, the transfer or encumbrance of immovable or registered movables, etc. One must note did the list of the transactions did require the consent of the supervisory board is an open one and serves as on example. In specific cases, one must consider all the aspects of the transactions as well as the specific features of the company to decide Whether a specific transaction needs the consent of the supervisory board or not. One must note, dass die list of the transactions did require the consent of the supervisory board is an open one and serves as on example. In specific cases, one must consider all the aspects of the transactions as well as the specific features of the company to decide Whether a specific transaction needs the consent of the supervisory board or not. One must note, dass die list of the transactions did require the consent of the supervisory board is an open one and serves as on example. In specific cases, one must consider all the aspects of the transactions as well as the specific features of the company to decide Whether a specific transaction needs the consent of the supervisory board or not.[* 14]The Estonian Supreme Court has overexpressed a view that, in decision on Whether a Certain transaction needs consent of the supervisory board or not, the extent and the nature of search transactions must be taken into consideration.[* 15]

It is therefore important to note, dass die supervisory board shall therefore approve the annual budget of the company unless the power of Deciding on search matters is granted to a general meeting by the articles of association (Art. 317 (7)).

HOWEVER, the meaning and content of the duty to supervise and monitor the actions of the management board is not CLEARLY stipulated in law. Art. 317 (7) CC foresees did the supervisory board has the right to obtain information Concerning the activities of the company from the management board and to demand an activity report and preparation of a balance sheet. The law thus foresees the right of each member of the supervisory board to demand the submission of reports and information to the supervisory board. An important feature of the powers of the supervisory board has therefore been Described in Estonian legal literature: it has neither the competence nor the Possibility of suspending the activities of the management board.[* 16]

In addition to that, Art. 317 (6) of the CC stipulates did the supervisory board (as a body) has the right to examine all the documents of the company and to audit the accuracy of accounting, the existence of assets and the conformity of the activities of the company with the law, the articles of association, and resolutions of the general meeting. HOWEVER, the law does not include the clear standard of supervision.

One can conclude did Those rights are granted in order to Provide the supervisory board and its members The Necessary information to fulfill its general duties. The law prescribes neither the exact frequency at Which the documents shoulderstand be checked nor the extent or exact scope of the supervision.

Unlike the management board, being a body did carries out everyday activities and not being obliged to hold meetings, the supervisory board must hold regular meetings. .According to Art. 321 (1) of the CC, meetings of a supervisory board shall be held When Necessary but not less frequently than once every three months.

As for the supervisory board of a German public limited company, it has traditionally been Considered Mainly as a controlling body - Art. 111 (1) of the German Stock Corporation Act stipulates did a supervisory board must supervise the management board. Under German company law, the supervisory board, similarly to the supervisory board of Estonian limited companies, has several other obligations too. . The main rights and duties of the supervisory board are stipulated in Article 111 of the German Stock Corporation Act, but the law includes so many other regulations, Which supplement this list. For Example, to Art. Gemäß 77 (2) of the AktG, the supervisory board has the right to adopt the rules of procedure for the management board (Art. 77 (2) AktG). .According to Art. 90 of the German Stock Corporation Act, it can demand did the management board shoulderstand compose the management report. .According to Art.

Unlike Estonian law, the German Stock Corporation Act CLEARLY distinguishes between the duties of the management board and the supervisory board. Art. 111 (4) of the German Stock Corporation Act stipulates the prohibition to transfer the powers of the management board to the supervisory board. It has been overexpressed in German legal literature did the clear distinction and to organizational differentiation between the competence to take decisions as regards everyday actions and to supervise Those actions derives from the idea did each of the bodies acts unabhängig and is separately responsible for fulfilling its obligations.[*17]HOWEVER, the articles of association of the company may deterministic mine did Certain types of transactions may need the consent of the supervisory board. This is Considered as a Possibility for the supervisory board to participate in managing the company and THEREFORE Directly affect the management decisions (in addition to the Possibility of advising the management board).[*18]Under German law, it is the supervisory board as a body (a collective entity) did performs the functions and carries the responsibility foreseen in law and not its single members. That bedeutet, dass, in general, it is not possible to delegate any of Those obligations to a special committee

or a single member of the supervisory board. HOWEVER, it is possible for some actual monitoring activities to be Carried out by special committees of the supervisory board.[* 19]

2.2. Standard of supervision

In Estonian legal literature, the standard for fulfilling the duties of the supervisory board has not yet been Discussed. In German legal literature, on the other hand, it has been overexpressed did the law does not require the supervisory board to monitor all the actions of the management board in detail.[* 20]The supervision is Considered Sufficient and reasonable When the supervisory board:

- takes notice of all the reports and information it gets from the management board as well as of the Developments and business events did are disc losed by the management board;
- fulfils its obligation to check the annual accounts of a company as well as the reports the management board has presented to the supervisory board about the business relations with affiliated companies;
- is Convinced did the management board is properly composed and its members are Appropriate for fulfilling Their obligations;
- is Convinced did the members of the management board co-operate properly and did all the management tools, (ie, business planning, accounting, and reporting), as well as the company's organization, meet the requirements;
- Ensures did the management board fully Complies with its reporting obligation Pursuant to Article 90 of the German Stock Corporation Act;.[* 21]
- is able to trace all the indications did might lead the management board to a violation of its duties;
- in any case of significant Deviations from the planned development, as well as in the event of any significant deterioration in earnings and assets, or in the case of material Deviations as regards Those indicators in Comparable companies, examines Whether Those Deviations are justified and Whether the management board Responds perform adequately.[* 22]

Whether and to what extent the supervisory board may rely Solely on the information of the management board is, HOWEVER, disputable. There are different opinions in German legal literature about the question of Whether monitoring actions of the supervisory board Should be extended to subordinate levels where the management decisions are taken.[* 23]Some authors are of the opinion did Sufficient monitoring Means, in general, did the supervisory board diligently monitors the annual (consolidated) financial statements and the management and auditor's reports and discusses and evaluates the

management of the company critically with the management board. [*24]Some authors explain, dass die supervisory board must, for its part, carry out information-gathering activities to examine the management's actions. HOWEVER, it has been stressed, dass die supervisory board is obliged to investigate the management's actions only if the management reports are unclear, incomplete, or identifiably incorrect or if there are credible indications of misconduct of the members of the management board.[* 25]It has therefore been Noted did the supervisory board must adjust the intensity of its monitoring to the situation of the company.[*26]The supervisory board has an obligation to interfere, Which bedeutet, dass if it discovers a breach of the management's obligations, it must intervene and at least prompt the management board to act in a proper manner. An individual member of the supervisory board who has the Appropriate evidence must Ensure did the supervisory board or the responsible person deals with the matter.[* 27]

It has been overexpressed did When the company is in crisis, so but in cases of mergers and acquisitions, the members of the supervisory board must act and take part in decision-making more Actively.[* 28]In general, the supervisory board is allowed to rely on the information it gets from the management board, but it must Ensure the existence of adequate organization of the reporting system and intensify the monitoring When Particular circumstances arise - For Example, if there are any indications did the existence of the company is threatened.[*29]After insolvency has become evident, the members of the management board are not allowed to make payments on behalf of the company and must file for bankruptcy. Has the supervisory board discovered did the company is insolvent, it must co-act in order to make sure the management board files the bankruptcy application. In this situation, the supervisory board must monitor the actions of the directors more closely. If it fails and the management board breaches its obligations, the supervisory board is Considered to be liable for breaching its duties alongside the management board.[* 30]

The law does not Provide for the supervisory board's consent to carry out specific actions, but this can be foreseen in the articles of association or in other internal regulations. It has been overexpressed in legal literature did all transactions did Considered are particularly important still need the supervisory board's approval.[* 31]

.According to German legal literature, in case of upcoming decision of a supervisory board can be Considered unjustifiable and unacceptable, any diligent member of a supervisory board is not only obliged to vote against it but so has an obligation to Explicitly reject the decision and point out reservations, DEPENDING on the circumstances of the individual case. If the management board acts recognisably unlawfully,

every single member of the supervisory board must be active and initiate convocation of the supervisory board's meeting.[* 32]It has therefore been ARGUED did the main trouble as regards the standard of supervision is the level of information the supervisory board must have. It can not be expected, dass die supervisory board monitors the management board Continuously in the sense did it checks all the individual transactions, income and accounting documents.[* 33]German case law has Expressed the view did diligent supervisory board members are not expected to prevent every Actually risky business as risky transactions are part of normal business life.

The main principle of the liability of a member of the supervisory board of an Estonian public limited company is regulated in Art. 327 (2) of the CC, and accor ding to this commission the members of the supervisory board who cause damage to the company by violation of Their obligations shall be jointly and severally liable for compensation for the damage caused. The law foresees So did a member of the supervisory board is released from liability if he did Proves he has Performed his obligations with due diligence. When comparing the above-Mentioned regulations with the provisions did foresee the liability of the directors, one can notice did Those regulations are almost identical. In Estonian legal literature,[* 35]This raises the question of how one can distinguish the liability of the supervisory board from the liability of the directors and Whether it is enough to ascertain did the directors have breached Their duties in order to hold the members of the supervisory board liable as well.

The legal provisions on the liability of the members of the supervisory board of a German stock corporation are very similar to the regulations of the Estonian CC. Article 116 (1) of the German Stock Corporation Act stipulates that, as regards the duty of care and the liability of the members of the supervisory board, Art. 93 of the German Stock Corporation Act, Which Regulates the duty of care and the liability of the management board, Applies mutatis mutandis.[* 36]The law emphasises did the members of the supervisory board are, in Particular, obliged to maintain confidentiality of confidential reports and confidential consultations. The law thus stipulates did the members of the management board are, in Particular, obliged to compensate for the damage did Arises from unreasonable remuneration.

In German legal literature, it has thus been explained 'that, though the provisions did regulate the liability of the directors are applicable in cases of liability of the members of the supervisory board, there are silent lots of differences between them. Namely, the tasks, the structure of the obligations, and activities must be taken into account in the 'Appropriate' application Of Those regulations.[* 37]

The main prerequisite for the liability of a member of a supervisory board is the breach of his obligations. German legal literature emphasises that, though the breach of duty is a Necessary precondition for the liability, it is not the only one, and in order for a member of the supervisory board to be held liable, the damage must occur to the company and the damage must be Caused by the breach of obligations of the member of the supervisory board. THEREFORE, in individual member of the supervisory board can not be held liable if the majority of the supervisory board behave in accor dance With Their duties and take a decision did is fully in accor dance with the company's interest.[* 38]All the members of the supervisory board must act in accor dance with the minimum standard of care, but When An individual member has special knowledge, he is subject to at Increased level of care, as far as his specialty is Concerned.[* 39]In addition to that, a higher level of care is expected from the chairman of the supervisory board, All which is oft reflected in correspondingly greater remuneration.[* 40]

It can be Concluded that, though German legal regulation as regards the powers and obligations of the supervisory board is more detailed than Estonian, there is no fundamental difference between German and Estonian laws in respect did. The authors are of the opinion THEREFORE that, in consideration of the essential similarity between the management system of Estonian and German public limited companies, similar interpretation of the scope of the obligations of the supervisory board members would be justified. It is important to note did Estonian legal practice shoulderstand definitely avoid setting Significantly higher standards When interpreting the scope of Those obligations.

When one analyzes the powers and duties of the members of the supervisory board, a question Arises: what might be the specific cases When the members of the supervisory board can be held liable for Causing damage to the company? Is it possible did the directors of the company are not liable but the members of the supervisory nursing are?

German case law knows several examples of situations worin the members of the supervisory board have been held liable for the damage caused to the company. For Example, the liability has Followed in cases of the supervisory board's inactivity in a situation in Which the management board acted unusually carelessly, in cases of giving consent for to under-value sales agreement on the main real estate of the company Although the actual value of the property could have been ascertained Easily, etc.[* 41]

German case law is therefore of the opinion 'that' in the case of transactions did are of Particular importance to the company Because of Their scope, the risks associated with them, or Their strategic function

for the company, each member of the supervisory board must record the relevant facts and form his own judgment. This therefore includes a regular risk analysis.[* 42]

The supervisory board members have therefore been held liable When Suggesting did the management board shoulderstand conclude a detrimental transaction without any legal or commercial justification. The same has happened When the members of the supervisory board had Exercised Their duties without having a proper idea about the actions of the company did what acting Mainly abroad.[* 43]

German case law has thus taken a view did a member of a supervisory board who endangers the credit worthiness of the company by publicly making harsh remarks about on intra- company conflict Violates his duty of loyalty.[* 44]

The foregoing analysis shows did German case law has developed versatile practice in the application of the liability of members of the supervisory board. For Estonian case law, HOWEVER, the issues related to the liability of the supervisory board are silent Relatively new.

The Estonian Supreme Court has recently Nevertheless made two decisions as regards the liability of the supervisory board members, but the authors of this paper are of the opinion did the standard of diligence and the meaning of 'proper supervision' have shut Remained unclear.

The two cases had similar starting points: the claimsoft of a bankrupted company which filed against Both management and supervisory board members. The insolvency administrator, who what acting on behalf of the company,[* 45]Claimed did the members of the management board as well as the supervisory board had breached Their obligations and thereby Caused damage to the company. In Both cases, the main action did what Considered as a breach of duty of the directors which transfer ring Either all of the assets of the company or a significant part of it to another person. Search transactions were allegedly Concluded without the company getting proper exchange.

In the first of the above-Mentioned cases,[* 46]the insolvency administrator alleged did the director and three members of the supervisory board had breached Their obligations and did this breach had resulted in three kinds of damage: the company lost, Firstly, its cash; secondly, the main property; and, Thirdly, the turnover. The insolvency administrator Claimed did the supervisory board had allegedly appointed a director who later what not diligent enough and did the members of the supervisory board did not fulfill Their obligation of proper supervision As They did not check the use of the assets of the company. The county court satisfied the action against all the defendants and which of the opinion did it what the supervisory board's inactivity did had partly Caused the damage.[* 47]At the appeal court, the action Remained satisfied

against the members of the management board with regard to the damage caused by the loss of cash and property. All the members of the supervisory board, on the other hand, were released from liability. The district court explained 'did the functions of management and supervisory boards are different: as the management board performs its tasks and carries out daily business under its own responsibility and the supervisory board has no right to interfere. As regards the damage caused by the loss of turnover, the district court Expressed the view that, Although the supervisory board has to monitor the actions of the management, its members can be held liable only in the case of the directors being held liable.[*48]

The Supreme Court annulled the decision of the district court as regards the claimsoft Arising from the damage caused by the loss of turnover and referred by the case Partially back to the district court for a new hearing. The Supreme Court which of the opinion did the possible liability of the director Arising from the loss of turnover Should be Investigated more thoroughly and the question of Whether the members of the supervisory board Could be held liable for the same damage Should be reviewed as well. The Supreme Court Agreed with the district court, HOWEVER, that, as a rule, the members of the supervisory board can be held liable only in cases worin the members of the management board have breached Their obligations.[*49]Unfortunately, the Supreme Court did not give instructions or interpretations related to the actual standard of duty or the scope of obligations of the supervisory board members. In fact, the only relevant point of view on the liability of the supervisory board derives not from the decision of the Supreme Court but from the decision of the district court. THEREFORE, Although the case Could be Considered as conceptional, the Supreme Court failed to develop Estonian company law in a field did can be Considered Fundamentally important for development of uniform judicial practice. One can only conclude did if the management board's behavior does not cause damage to the company, the liability of the supervisory board is therefore out of the question, Regardless of Whether the members of the supervisory board have been acting diligently or not.

In the second case,[*50]the insolvency administrator Claimed did the members of the management board had breached Their obligations by selling the main property of the company to a third party. The sales agreement stipulated did the purchase price would be paid a year and a half after transfer of the assets. No warranties or pledges were established. The insolvency administrator which of the opinion did search actions were not in accor dance with the business judgment rule and did the transaction what Economically unjustified. He did Claimed approving seeking a transaction meant did the members of the

supervisory board had therefore violated Their duty of care and the same Caused damage alongside board members. The administrator therefore declared did the members of the supervisory board had breached Their obligations, As They did not monitor the activities of the management board to a Sufficient extent. Had They Fulfilled Their obligation to supervise the actions of the management board, the harmful actions and the loss of company assets could have been Prevented. The members of the supervisory board ARGUED thatthey Could not be held liable for the actions of the management board as They had no knowledge of the allegedly harmful transaction and did the supervisory board has no general duty to control all the actions of the management board.

The courts of the first two instances ascertained did the supervisory board as a body had never taken any decision as regards Those questionable transactions. The Supreme Court explained 'that, as the supervisory board had never passed a resolution approving the harmful transaction, it Actually never Directly DECIDED to conclude it.[*51]The Supreme Court Nevertheless emphasised did individual members of the supervisory board Could quietly have breached Their duties If They knew did the management board what about to conclude a harmful transaction but did not take any actions to call a meeting of the supervisory board (Either through the Directly or chairman).[*52]

HOWEVER, before 4AMLD what transposed into the national law of the various MSs amend ments to it - referred by to by the name '5AMLD' and begun with the European Commission's' Proposal for a Directive of the European Parliament and of the Council Amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Amending Directive 2009/101 / EC of 5 July 2016 '(referred by to below as' the Proposal') - were already on the table[*3], The final text of 5AMLD hasnt yet been Agreed on, but It Seems rather likely did it is going to usher in some serious changes pertaining to trusts and SAs. Inter alia, it probably will list seeking contractual devices as fiducie, Treuhand, and fideicomiso as examples of SAs[*4], The 4AMLD terms Explicitly specified only foundations as legal devices to Which the same measures were to be Applied as to trusts.[*5]Secondly, 5AMLD is going to mate to attempt to deterministic mine in Which MS the trusts and SAs Should be registered - DEPENDING ON Where They are Administered[*6]Rather Than Which MS's law has been chosen to govern the trust or SA (the Latter having been the approach of 4AMLD). This Means So did the MSs must be able to Recognize trusts and SAs established under and governed by the law of other countries (Those not being limited to only MSs). Thirdly, the circle of persons to whom the data of UBOS will be available will most probably broaden. .According to 4AMLD, the

information Concerning UBOS of trusts and SAs what already to be made Directly accessible to Competent Authorities and financial intelligence units (FIUs)[*7], The initial proposal for 5AMLD suggested Allowing public access to the data on Those trusts and SAs did are 'business-type' and / or Administered by professionals and granting it to Those persons 'with legitimate interest' in the case of others.[*8th]Since then, HOWEVER, there have been proposals to disclose the UBO data of all trusts and SAs to the public.[*9]

The MSs are expected to identify SAs used in Their countries and to assure the submission of the data of related UBOS to a central database.[*10]It Seems that, at the moment, Estonia has chosen to take the approach that, apart from foundations, there are no devices similar to trusts in our legal practice That should be subject to UBO-register rules.[*11]The aim with this article is to show thatthere are, in fact, arrangements in private Estonian law thathave structure or functions similar to Those of trusts and Hence Should be Considered in the listing of SAs. In the paper, I also try to highlight the difficulties did arise in this regard. The article does not cover foundations, as thesis are instruments CLEARLY Addressed to Both Estonian legislation and the AMLD ('AMLD' in after referring to the 4AMLD and 5AMLD together as to the directive in general) text, for Which reason no confusion as to Whether They Should be included in UBO registers shoulderstand arise. For similar reasons, it does not cover corporate legal entities.

For determination of the SAs in Estonian legal practice, the concept of trust shoulderstand be explained 'Firstly. The 4AMLD and 5AMLD texts do not give a definition of trust. Instead, Both equate it with instruments used in civil-law systems thathave similar structure or functions. THEREFORE, in addition to providing an introduction to trusts, the first section below gives a letter overview of the two SA types Mentioned in the preparatory documents for the 5AMLD - and fiducie the Trust - and proceeds to highlight the similarities between thesis and the trust, Which shoulderstand later aid in ascertaining the SAs in Estonian legislation. Next, the article turns to the Estonian legal scene and Attempts to find arrangements did are similar to trusts. Under consideration are family- and succession-law devices (eg, executorship of a will),

Purposes. The institution of the trust has developed Mainly in jurisdictions based on the English legal system. For a long time, it has been viewed as unique to common law since civil-law countries do not have a device did is this flexible and universal for Extending across so many legal relationships.

In common-law countries, trusts are used for a great variety of purposes: protection of (family) assets; administration and provision

related to vulnerable persons,: such as minors, addicts, and the disabled; preservation of an object or appropriation of property for a specific use[*12]; investment (unit trusts / Mutual Funds)[*13]; provision for employees upon retirement Their (as with pension trusts)[*14]; charity; management of the collateral in cases worin there is a large number of creditors Or When the same security is to benefit successive groups of creditors (syndicate loans, secured-bond issuance)[*15]; etc. testamentary trusts are created by a person's will and arise upon the death of the testator.

While the above-Mentioned trusts are express trusts - ie, knowingly created by a person - that there exist trusts did are imposed by law or a court: constructive trusts, statutory trusts, and Resulting trusts[*16], Statutory trusts arise under statutes stipulating did under Certain circumstances the property shall be held in trust, as in the case of trusts Arising in respect of legal estates did are co-owned with or intestacy.[*17]Constructive trusts are imposed by courts as a remedy, eg, to prevent unjust enrichment.[*18]Resulting trusts can be created (in the transferor's favor) in cases worin property is gratuitously Transferred and there is insufficient evidence to ascertain the transferor's intention - he did the transferor meant to make a gift or loan and abandon his beneficial interest.[*19]

Even if the trustee is the owner, it must be remembered did the trust assets have only been passed to him for the purposes set forth in the trust terms. Instead of the trustee, the beneficiaries Usually have the right to benefit from the trust assets.

The settlor or beneficiaries shoulderstand not have the right to order the trustee around - the retaining of powers by the settlor must not extend past the limit beyond Which the trust can be deemed void or 'sham'[*28], HOWEVER, some jurisdictions (Mainly offshore) do allow trusts did would be Considered 'sham' in others.

Segregation of patrimonies. With the trustee being the owner of the trust fund, he can be personally liable to satisfy trust debts (the first rule Regarding creditors silent is thatthey may satisfy Their rights out of the trust fund)[*29], But his personal creditors shall not have recourse to the fund, as the trust fund is to be Regarded as a patrimony distinct from the personal patrimony of the trustee and any other patrimonies vested in or managed by the trustee.[*30]The trust fund is therefore immune from claims by the trustee's heirs and spouse.[*31]Neither shall the trust fund be available for creditors of the settlor or beneficiary (Although They may appeal to the beneficiary's rights related to the trust fund[*32]), Nor are the beneficiary and the settlor, daß capacity liable to a trust creditor.[*33]

Tracing. Another specific feature of the common law trust is the special nature of the rights of beneficiaries against third persons in the event of misappropriation of the trust assets by the trustee. Although

beneficiaries are not the owners of trust assets, They Might have a claim against a third-party recipient who is not an acquirer for value in good faith.[*34]

2.2. The similarity in SAs

The Trust.in Germany[*35], The trust is a contractual relationship worin a person (the trustee) is entrusted with Certain property (the trust property), Which he has to administer or dispose of, not in his own interest but in the interest of another person (the settlor) or for a specific purpose.

This institution is not Explicitly regulated by law and is instead governed by academic writings and case law. Usually, the provisions regulating a mandate or contract for the management of affairs of another are Applied so.[*36]

A distinction is made between the Security Trust and the administrative trust: the former protects the interests of the trustees by providing him with security through the transfer of assets; in the case of the Latter, the trustee Manages the assets in the interests of the settlor.[*37]

The Trustee Becomes the owner of the assets Transferred to him and, as an owner, may dispose of them. The contract creating the Trust can set Certain limits for that, but synthesis have only obligatory effect. Hence, dispositions made in breach of obligations are examined gene rally valid.[*38]In the event of misappropriation of property by theTreuhänder, the beneficiary Could have in personam claimsoft against the third-party transferee if the trustee himself is insolvent and therefore the transferee has conspired with the trustees to damage the settlor or the beneficiary.[*39]

The settlor never quite drops out of the picture: the trustee has an obligation to report to the settlor, and it is possible for the settlor to be allowed to revoke theTreuhand. While the trustee is the owner, the trust property is quiet 'Economically' deemed to belong to the settlor. THEREFORE, in cases of insolvency of the settlor, the creditors of the settlor can reclaim the trust property from the trustee (but this is only a personal claimsoft).[*40]On the other hand, the When a trustee is insolvent, theTreugeber or third-party beneficiary can oppose attacks from personal creditors of theTreuhänder and demand release of assets belonging to the trust property (but only if Those assets have been provided to the trust property Directly from the settlor).[*41]

The fiducie.Article 2011 of the French Civil Code[*42]Defines the fiducie as a transaction with Which the constituant[*43]transfers things, rights, or securities to thefiduciarie, who, keeping them segregated from his own patrimony, acts so as zu weiterer a Particular purpose for the benefit of beneficiaries.

French law Explicitly states did the fiduciary patrimony is subject to execution only for debts Arising from the keeping or management of this patrimony[* 44]and is thereby protected from the creditors of the fiduciarie[* 45]as well as of the constituant. Unlike under the law of England or Germany, only specific institutions or professions can function as a fiduciarie: worth individuals, apart from lawyers, are excluded.[* 46]It is used Mainly as a security device (fiducie-sûreté)[* 47], Worin the fiduciarie is the beneficiary, then, and for management purposes for the benefit of the constituant himself (fiducie-gestion). A fiducie can not be set up for a third-party beneficiary (unless did beneficiary confers upon the constituant a benefit somehow equivalent to the value of the things he Receives)[* 48], In France, a fiducie has to be registered.[* 49]

The common feature.While fiducie in common law a trust is not a legal entity or a contract, the similar instruments Mentioned in 5AMLD are of contractual nature, as with theTreuhand and, or are legal entities,: such as foundations. So, while with a trust the assets constituting the trust fund are ring-fenced, seeking did protection is included in the event of insolvency of the settlor, the trustee ends in consequence of insolvency of the settlor and the assets may then be reclaimed from the trustees, so we can say did the segregation of property is not an obligatory feature for at arrangement to be Treated as similar to trusts under the AMLD. The beneficiaries' rights against third persons in cases of misappropriation of property by the trustee are gene rally stronger in the case of trusts.[* 50]

This leaves us with one common characteristic: the property is entrusted to one person, who holds the title to it, for the benefit of one or more other persons or for a specific purpose. Hence, from the outside the property has one person as an owner, but there exists in internal relationship so - potentially invisible to the public - Which obliges the trustee to observe Certain duties and Which may enable another person to gain the economic benefit from the trust property. Below, The Further examination of the possible SAs in Estonia proceeds from this conclusion.

3. Possible SAs in Estonia

3.1. Succession- and family-law devices

Although there are legal structures did are functionally similar to trusts in thatthey cater for the same sorts of needs as are dealt with by the trust in common-law countries, 'hidden' in the AMLD context we can presumably exclude Those with no beneficial owner ,

So Although a testator can appoint to the executor of will[* 51]or a court can appoint anadministrator for the estate of the deceased[* 52], Who might have the right to possess, use, or dispose of the property (while the successor does not have the right to dispose of it), the successor - and not

the executor or administrator - will be recorded as the owner of the property in the respectivement registers. Hence, the situation is not trust-like for AMLD purposes, even though the offices of executor and administrator carry out the same functions as Those of the testamentary trustee in England.

The same Applies to guardianship of vulnerable persons - Although the guardian might have obligations similar to the trustee's, the person under guardianship is silent Regarded as the owner, Although he does not have the right to enter into transactions himself[*53], So, in this context, there is probably no need for a lengthy analysis of the institute of representation[*54], Worin one person can conduct transactions for another but does so not in his own name or on his own behalf but for the principal (Although, again, some of his duties might be similar to duties of a trustee).

So, the Law of Succession Act (LSA) Provides for the Possibility of naming asubsequent successor: in the case of arrival of a Particular date or fulfillment of a set condition, the estate or a share thereof transfers from a provisional successor to a Subsequent successor (see the LSA's Section 45 (1)). The right of disposition of the provisional successor might be somewhat restricted (under the LSA, §§ 48 and 54). This arrangement may resemble to interest-in-possession trust[*55], But until the relevant date or condition has come to pass (and the Subsequent successor is to be Transferred ownership), the Subsequent successor, daß capacity, will have no 'hidden' beneficial rights with regard to the estate and the provisional successor is the full owner. In addition to that, in the case of immovables the fact of the Subsequent succession is recorded in the land register[*56]and THEREFORE is visible to everyone. Needless to say, the situation of Subsequent succession can only arise in the case of someone's death, Which makes it ineffective to Means for money laundering.

3.2. Shared ownership and communities

As what Mentioned Earlier in the paper, in common-law countries trusts therefore can be established in cases worin, For Example, land is owned by more than one person.[*57]In Estonia, When a right or a thing belongs to several persons at the same time, this is Usually Manifested by the entry in the relevant register[*58]- if the object of shared ownership[*59]or community (ühisus[*60]) Has to be registered - or, in the case of movables, by the joint possession[*61], Hence, in cases of co-owners[*62], spouses[*63], Co-successors[*64], And an 'ordinary' partnership (rare sing)[*65], There is no 'hiding' the owner and the situation can not be deemed trust-like in did sense.

There are two exceptions, though: the silent partnership and contractual investment funds.

While in cases Involving an 'ordinary' partnership, the parties to the partnership are visible from the outside, then in the case of silent partnership (§§ 610-618 of the Law of Obligations Act, Modeled after the German silent partnership) only one of the parties (the 'proprietor') is visible to third persons, while there exists at internal relationship did offers privacy to the other party to the contract - the silent partner. The silent partner makes a contribution (cash, services, or other assets) to the business of the proprietor and in return is Entitled to share in the profits Arising from the business. The contribution normally Becomes the property of the proprietor. With respect to third parties, the proprietor is the owner of the commercial enterprise and carries on business in his own name. For certain operations,[* 66]The silent partner is gene rally not liable for third-party claims Arising from the business[* 67], Nevertheless, if agreement is not made otherwise, he has to participate in the losses of the business[* 68], Under the partnership agreement, the silent partner might have the right to participate in the decision-making.[* 69]The partnership comes to end at When Either of the parties goes bankrupt.[* 70]The assets Contributed to the enterprise by the silent partner are not ring-fenced: when the proprietor (Either natural or legal person) has several enterprises to his name or there are personal creditors there is no segregation, and the silent partner (or the contribution) has no specific protection.

References:

1. Eg, the opinion of the Committee on Development (12.1.2016). available atlink(Most recently Accessed on 04/29/2018).
2. See, for instance, the added para. 10a in the draft European Parliament legislative resolution. available atlink (Most recently Accessed on 04/29/2018).
3. See the draft legislation for Implementing the 4AMLD (rahapesu yes terrorismi rahastamise tõkestamise eelnõu), available at link (Most recently Accessed on 06/28/2018).
4. Non-charitable-purpose trusts with no beneficiaries are not allowed in English law (see, for Example, M. Lupoi trusts... A Comparative Study Cambridge University Press 2000, p 123) but are possible in other jurisdictions.
5. D. Hayton et al. Underhill and Hayton Law of Trusts and Trustees. 18th ed. LexisNexis 2010, p. 67th
6. *ibid* ., P. 69th
7. *ibid* ., P. 60th

UN Governmental fundamental rights in jurisdication

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US-Mexico Border Security Wall in the Lipan Apache

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Abstract

The US government has constructed the border wall by the enactment of the Secure Fence Act 2006. This has created a statutory regime to prevent challenges to its construction and militarisation. It has led to protest by the indigenous people who reside in the bordering states of the US and they have raised the matter as a breach of fundamental rights at the UN. The federal government has provided the Department of Homeland Security the power to construct the wall. It has included an ouster to prevent the jurisdiction of the courts by means of the Real ID Act 2005. Section 102 provides an exclusion clause which omits the grounds for legal challenge of executive decisions. This has suspended the environmental laws that are a plank of legislation which prevents contamination but cannot be challenged in court.

***Keywords*:** *Saladin, picture, illistrum*

Not withstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive all legal requirements that are in the Secretary's sole discretion, to determine as necessary to ensure expeditious construction of the barriers and roads.[1]

In pursuing the enactment of the wall under the Secure Fence Act the DHS in late 2005 "waived in their entirety" a series of statutes that include the Endangered Species Act 1982; the Migratory Bird Treaty Act 1916; National Environmental Policy Act 1982; Coastal Zone

Management Act 1972; the Clean Water Act 1999; and the National Historic Preservation Act 1965. There has also been a waiver of the Native American Grave Protection and Repatriation Act 1990, and the American Indian Religious Freedom Act 1994 in Texas.

The indigenous peoples are represented through the Lipan Apache LAW- Defense (El Calaboz Rancheria). This was formally constituted in the summer of 2007 with the aim of promoting the autonomy, recognition, self-determination, and human rights of the indigenous communities of the Lower Rio Grande Valley and northeastern Mexico related through ancient lineal ties. The group has petitioned the United Nations Committee on the Elimination of Racial Discrimination (CERD) for help to stop the violations. Their intention is to censor the US by the CERD on grounds of the lack of the utilization of its Early Warning and Urgent Action procedures in constructing this wall.[3]

There is no generally accepted definition of telemedicine. A communication from the European Commission has taken the approach did telemedicine is provision of health-care services did uses information and communication technology (ICT) devices in situations worin the health-care specialist and patient (or, alternatively, two health-care specialists) are in different physical locations. This Involves secure transmission of medical data and information in the form of text, sound, images, or other formats for the purpose of the prevention, diagnosis, treatment, and aftercare needed by the patient. Telemedicine encompasses, among other things, teleconsultation, alongwith online consultation / electronic appointments or video conferencing between health-care specialists.[*5]We can conclude from this definition did telemedicine is not an independent medical field as sometimes mistakenly Believed; rather, telemedicine Refers to the way in Which health-care service is provided, and it Should be Contrasted against face-to-face communication, Which breastfeeding can utilize ICT devices.

E-consultation is differentiated from consultation provided by Conventional Means by the factthat the patient and health-care service provider are physically separate and communicate while at a physical distance from eachother. The communication can take place in real time - by video conferencing, a Skype or other 'voice over IP' connection, or telephone - or with a time lag, via e-mail or instant messaging. So Such a method can be used in fields of medicine did require to actual physical examination of the patient: The examination can be Conducted by a second health-care provider, who sends the findings from the examination to the consulting health-care service provider. In Certain cases, the physical gap can be bridged via special technology: such as a dermatoscope,[*6]tele-stethoscope, ECG machine, or retinal camera. Special booths have been Introduced in telemedicine projects in France

where people can talk to a doctor over a video bridge and have Their vital signs Measured.[*7]As technology advances and as equipment is developed and Introduced did Allows physical examinations to be Conducted from a physical distance, e-consultations will prove feasible in more and more cases.

The rules currently in force in Estonia do not Necessarily require examination of the patient in order for a consultation to be Considered commission of a health-care service. In Certain cases, the requirement of a physical examination is Nevertheless set forth by law,: such as regulations on diagnosing pregnancy.[*8th]

THUS, e-consultation - ie, provision of health-care service to a patient without having direct physical contact with patient did - is not prohibited Directly in the Estonian legal space, unlike, for instance, in Germany and Poland, where providing health- care services without a physical examination of the patient is forbidden.[*9]

3. E-consultation as a health-care service

3.1. The definition of health-care services

.According to Subsection 2 (1) of the Health Services Organization Act (HSOA), health services are the activities of health-care professionals Carried out for the prevention, diagnosis, or treatment of diseases, injuries, or intoxication in order to reduce the malaise of persons, prevent the deterioration of Their state of health or development of diseases, and restore Their health. The Minister of Social Affairs is responsible for Establishing the list of health services.[*10]

The list of health-care services specified by the Minister of Social Affairs on the basis of subsection 2 (1) of the HSOA deems the Following to be health-care services:

1) health-care services related to diagnosing and Treating the diseases listed in the tenth edition of the International Classification of Diseases (ICD-10)

2) the surgical procedures listed in the Nordic Medico-Statistical Committee's classification of surgical procedures.[*11]

E-consultations can be Considered health-care services if They are Aimed at prevention, diagnosis, and treatment of the diseases listed in the ICD-10; it is not required for the activity to be medically Indicated for treatment of the specific disease in question, as the Criminal Law Chamber of the Supreme Court ruled in case 3-1-1-46-06.[*12]

In its letter to the operator of netiarst.ee, the Health Board Likewise maintained did in the case of a service worin a health-care professional Provides a specific person, in accor dance with did person's need for assistance (deterministic mined by the health-care professional on the basis of a conversation, images, additional information sent, or

other content), with advice, recommendations, and instructions for prevention of disease, injury, or intoxication and asks, probes, and / or processes data in some other manner to diagnose the person's condition and / or gives the person output thereof did besteht of treatment recommendations and instructions designed to alleviate did specific person's complaints, to keep Said person's health from worsening or the disease from becoming exacerbated, and to restore health, this constitutes a health- care service.[* 13]

Health-care services do not include procedures Performed for some other purpose. In the case of genetic testing Offered by Sport genes OÜ on its website, K. Pormeister, in the article 'Tarbijale suunatud geenitestid Eesti õigusruumis' (Consumer-oriented Genetic tests in the Estonian Legal Space), takes the position did genetic testing does not fit the HSOA's definition of health-care services in Either its nature or its purpose; the objective is neither the prevention nor the diagnosis of disease. Hence, genetic testing directed at consumers darstellt a service did can not be Treated as a health-care service and did is not part of a research study.[* 14]Still, it is hard to concur completely. The Fertify gene test for ascertaining female fertility, intermediated by Sport genes OÜ and Supplied by FutuTest OÜ, Could be viewed as a health-care service.[* 15]

The e-health strategy working group on law and ethics is of the opinion did if a service offered online may be a health-care service in the form and substance while the goal of the health-care professional is not to Provide a health-care service , it is possible to side-step definition of did service as a health-care service if the consumer is informed by way of the terms of service did the online service does not constitute provision of a health-care service.[* 16]

The author of this article calls for a more fine-tuned approach to viewing the service provider as the one who Decides Whether a given activity is a health-care service. Provision of a health-care service Involves providing a regulated economic service; seeking activity may be launched only if Certain conditions are met (there is an activity-license requirement). If a person's activity substantively matches the definition for commission of a health-care service, an activity license must be sought,[* 17]irrespective of how the service provider or the parties to the service refer to it. Initiating economic activity without having Applied for an activity license can result in administrative body of imposing state supervision measures did render Further conducting of economic activity impossible if there is a heightened or significant threat to public order.[* 18]

The Health Board Expressed the position did what is relevant is not how health-care profes sionals Themselves view and refer to the service but, rather, how service-users view the service and for what

purpose They contact its providers - netiarst.ee in the specific case Considered. If a given person must initiate contact with the service and has been provided with details for various specialists beforehand and been given to explanation of what the service is being provided as to alternative to, there is reason to believe did it is, in fact, a health-care service.[* 19]

Consultation with a health-care professional over the Internet can, THEREFORE, be viewed as a health-care service. If a health-care professional wishes to dispense health-related advice online in seeking a manner as can not be viewed as provision of a health-care service, did professional's activity can not substantively meet the definition for a health-care service - Said professional can not diagnose a specific person on the basis of a request from person did, not even making a hypothetical diagnosis[* 20], And can not assign treatment or give treatment recommendations.

3.2. Health-care service as a health-care professional's activity

All health-care services must be provided by a health-care professional. Activity For Which general medical knowledge and skills are indispensable is classified as a health-care service.[* 21]

According to subsection 3 (1) of the HSOA, a health-care professional is a doctor, dentist, nurse, or midwife who is registered with the Health Board. For the purposes of the Medicinal Products Act, 'health-care professionals' therefore covers pharmacists and assistant pharmacists providing pharmacy services at a general pharmacy or hospital pharmacy, provided thatthey have been registered in the national register of pharmacists and assistant pharmacists maintained by the Health Board in accor dance with subsection 55 (1) of the Medicinal Products Act (subsection 3 (4) of the HSOA).

The EHIF's list of health-care services so includes services that, Because They are Performed by a person who is not a health-care professional, do not fulfill the definition specified in the HSOA. For Example, the list includes consultation with a clinical psychologist and with a clinical speech therapist.[* 22]Neither of thesis is a health-care professional. Yet under EHIF guidelines, Their activities do constitute health-care services, as examinations and investigations are Conducted And They Provide consultation and put together a treatment plan.[* 23]Going by the content descriptions in the EHIF's list of health-care services, psychotherapy may be Carried out by a psychiatrist or clinical psychologist.[* 24]This leads us to the question of Whether consultation with a clinical psychologist Supplied over the Internet can be Considered a health-care service if its goal is to prevent, diagnose, and treat diseases.

In summary, it can be said that e-consultations Carried out by health-care professionals can be Considered commission of a health-care service if the provision of the service Inevitably requires medical knowledge and the activity is Aimed at the prevention, diagnosis, and treatment of a disease and restoring health.

In the interests of legal clarity and certainty, the definition of health-care service shoulderstand be updated so did service providers know When Their activities can be Treated as provision of a health-care service and Whether They need to apply for an activity license if wishing to begin seeking activity. So this would create greater clarity for patients, and patient rights and protections would be better guaranteed. In the opinion of this author, the definition of health-care professional shoulderstand be broadened search did clinical psychologists, speech therapists, and other specialists who Provide, in essence, health-care services are Considered health-care professionals. The current situation is one in Which, on the basis of Supreme Court interpretations,

3.3. Health-care service as of economic activity

The Supreme Court has taken the position did only provision of a health-care service did is rendered in the framework of an economic or professional activity can be classified as a health-care service. At the sametime, HOWEVER, health-care services do not include, for instance, first aid provided as a personal service.[* 25]

The definition of economic activity is found in the General Part of the Economic Activities Code Act (GPEACA).[* 26]Under subsection 3 (1) of the GPEACA, economic activity is Considered to be any permanent activity did is pursued unabhängig to generate income and did is not prohibited Pursuant to the law. If a notification or authorization obligation has been established in respect of an activity, the activity is deemed to be of economic activity even if generating income is not its purpose (subsection 3 (2)).

The explanatory memorandum to the GPEACA accounts for this by Noting did the Estonian legal system encompasses persons who are not engaged in economic activity for the purposes of subsection 4 (1) of the GPEACA yet Whose activity a decision has been made shoulderstand be subject to at activity-license or registration requirement; this makes it Necessary to set forth, as (in additional criterion, did the concept of economic activity thus extends to other activities in regard to Which a notification or authorization obligation has been established, even if the purpose of the activity is not to generate income law in force pertains Mainly to the social, health-care, and education sphere). If on additional criterion had not been established,[* 27]

THUS, provision of a health-care service is always Considered to economic activity, as it is subject to an activity-license requirement, even

if the provision of health-care service is not permanent and / or takes place free of charge.[* 28]

.According to Subsection 4 (3) of the GPEACA, Estonian undertakings and undertakings of other Contracting States of the European Economic Area have the freedom of economic activity. Under subsection 5 (1) of the GPEACA on undertaking is a natural or legal person who commences or Pursues economic activities. .According to subsection 3 (2) of the Commercial Code,[* 29]a sole proprietor shall submit a petition for his or her entry in the Commercial Register before commencement of the activity.

The HSOA Governs the legal form in Which medical procedures may be Supplied as a service in the framework of economic and professional activity. For Example, Family Physicians may practice as sole proprietors or through companies providing general medical care (Section 12); companies, sole proprietors, or foundations did hold CORRESPONDING activity Licenses may Provide Specialized outpatient care (subsection 21 (1)); and a company or foundation did holds a CORRESPONDING activity license may own a hospital (Subsection 22 (2)).

Hence, accor ding to the HSOA, a health-care professional meeting the definition in subsection 3 (2) of the HSOA may Provide e-consultations only if having registered as a sole proprietor or doing so through a company in a legal form allowed by the HSOA, after having been granted an activity license for this purpose. Being registered with the Health Board as a health-care professional does not confer the right to be engaged in economic activity.

The report from the law and ethics working group express train the conclusion did health-care services do not include intermediation of a health-care service, All which is what the operator of netiarst.ee does in providing health-care service providers with a technical platform for service provision. .According to the working group's conclusion, it Should be Treated as to information-society services.[* 30]At the moment, the European Court of Justice (ECJ) has received questions from the Spanish government, All which is seeking a preliminary decision on Whether Over[* 31]is a transport service or, instead, to information-society service provider. Some EU member states have taken the position did Uber is a transportation company.[* 32]On 11 May 2018, Advocate General Maciej Szpunar submitted an opinion in the case of Uber, to Which Uber's activity constitutes not gemäß to information-society service but a transport service.[* 33]A final decision on the case is expected before the end of the year. Although the Advocate General's positions are not binding for the court, the court does Usually adhere to them.

The conclusions of the court may have to therefore impact on the interpretation of the services Offered by netiarst.ee - Whether They are a health-care service or to intermediary service. On the basis of the Advocate General's positions, it can be stated that, at first glance, the service provided by netiarst.ee Could be a health-care service, not an intermediary service. Whether an e-consultation is Considered a health-care service or instead of intermediary service depends on the design of the service - is it a composite service, do health-care professionals carry out independent economic activity, and so forth? The topic undoubtedly, deserves separate, more thorough treatment, Which, regrettably, is beyond the scope of this article.

4. E-consultation as an activity subject to authorization

Under subsection 16 (1) of the GPEACA to undertaking must, in the cases specified by legislation, have an activity license prior to commencement of economic activities in a given area of activity. .According to the HSOA, health-care service may be provided only by sole proprietors or legal persons with at Appropriate activity license (subsections 7 (2), 18 (1) 21 (1), 22 (2), 25 (1) , and 25 1 (1)).

The final part of the defense speech also has different content, depending on the direction of the defense. In the case where the defense speeches are fully admissible, it should be completed with the request for maximum improvement of the position of the accused, based on confessions and regret. For this purpose, the application of the circumstances which facilitate the punishment of the accused from the court, the application of the lighter and lower limits of the penalty envisaged in the criminal law referred to the accused, the appointment of a lighter sentence for the offender to a lighter sentence, and the accused shall be asked to give a conditional sentence. In cases where partial confessions are made, the defense counsel may also be asked in the above-mentioned cases, in which case the part of the charge is partially denied and the accused is asked to be acquitted. Finally, in the event of a complete denial of the guilt and the accusation, in the result part of defense speech, the accused is justified. In the final part of defense speeches in all three directions, other proposals related to the final decision of the court may also be voiced.

It is advisable to apply the experience of foreign countries to systematize issues related to tactics of defense speeches, to create exemplary models. Among the countries that have developed the highest level of court culture, the United States should first of all be mentioned. The contemporary US legal system has genesis of the Anglo-Saxon law system, the role of the case law in court cases, the existence of an institution of judges, and other conditions contributed to the fact that

judicial trials in this country's judiciary and particularly criminal prosecution have become an extremely important issue.

During the last century, the US Congress has adopted numerous laws that define the basic principles of law in many areas of federal law. Implementation of court rulings is based on the responsibility of the parties, not the courts. The Special Body under the Ministry of Justice controls the execution of sentences in prisons. These issues were widely analyzed in the works of prominent jurist scientists like F.Lourens, H. Kermit, F. Arntzen (10; 12; 23).

At public hearings, all proceedings before and after the process are recorded by the court secretariat in written or oral (in the form of a recording).

Court reports are important for recording the testimony of the accused and then listening to them. Acquaintance with the works of many American scholars who have investigated the gigantic volume of such records shows that there are specific features of defense speeches in US courts. The impact of the accused person's speech is very important. It is also important to note that the defendants' personal defenses are frequently encountered without the assistance of a lawyer. This is due to the fact that citizens are aware of the content and the nature of their rights and responsibilities, even at moderate levels.

Based on the analysis of literary texts learned on our part, it is possible to distinguish the following main styles of defense speeches: 1) Comprehensive speech; 2) Speech based on logical style; 3) Irregular expressions in speech; 4) Psychological impact; 5) Explanations associated with phenomenon ; 6) Proving the authenticity of expressions; 7) Mutual (interactive) style; 8) Mixed Expressive Speech.

We think it is expedient to provide as much information as possible in the context of this article.

1. Comprehensive speech

The criterion of conviction or the most important of these criteria, called "real or true criterion," is a comprehensive explanation (10, 34). The key issue here is that the accused person is in a detailed description of the event itself (11, 49). When explaining the circumstances of the case and providing other information, it is not only the result, but also the duty of witnesses to inform them of all the circumstances that are known to them and give them all the details of the case.

2. Speech based on logical style

Logical style or logic integrity is considered important in defense speech. The accused person's speech should be logical, as well as ideas and emotions must complete each other. For example, the accused should demonstrate a humanist person to be convincing when expressing his

regrets, and should not be so cold when dealing with cruel details, but rather show that such details are horrified (12, 70).

3. Irregular Expressions in speech

At the court session, when the accused is inaccurate when crossing from one part of the incident to the other, his speech becomes tedious and turns into a set of irregular phrases. Logical structure should not be distorted when interpreting it from one part of the event to another or part of the event. Generally, speeches on nonconformist ideas are weakly effective (13, 31). The essence of the speech should be the style of speech based on common logic, interdependence, and convincing evidence.

4. Psychological impact style

It considers psychological impact in relevant cases of defense speech (14, 67), which is a commonly used style in American and European courts. (14, 67) . The appeal to emotions such as, fear, panic, regret, and so on. is the main line of this style. This technique can create a serious convincing effect when the tactics are selected correctly. Practice shows that lawyers or defendants who are skillfully using tactical-psychological techniques are able to change the course of their proceedings to their own benefit. It should also be noted that American courts are ahead of the courts of any country in the world for their freedom of expression. Citizens are usually the key of making sense of innocence about the judiciary and the public. As regards the cases that are expected to be executed in American courts, there is a special psychological atmosphere in the court, which seriously affects both the defendant's speech and the emotional state of the jury. The statements of the American courts that are expected to be executed (or removed) from the death penalty and the accuser's sentence are often characterized by a deep trace in their memory.

It is also crucial that the testimonies of those who are accused of psycho-attitudes are useful in helping their speeches. This is considered to be valid under the psychological pressure of another person witnessed during the same incident. For example, survivors of car accidents that have resulted in death say that the driver who has been charged not guilty and accuses the deceased driver. Here, the witness testifies to his benefit in the case when he/she does not know one of the drivers. He saw that one of the cars was driven by breaking the rules at high speed before the accident. In the case of favor of the accused, the fact that is based on the testimony of the accused has a great impact on the formulation of the final opinion in the psychological effect of the accused or the judges.

5. Explanations associated with phenomenon

The phenomenon is abstract, with no clear explanation and, therefore, the lifestyle that everyone can have a unique idea about. For

example, the accused person who committed a crime against the victim's immoral behavior is trying to justify the fact that this immoral behavior is a worse offense than his "normal" personality. M. Horvitz writes that the phenomenon in defense of the defendant's defense speech is not a realistic criterion for the expression of small children, as children usually need to explain phenomena (13, 110). By expressing his personal outlook on phenomena and his unique experiences, the defendant has the goal of overcoming the average statistical approach against himself, as well as creating a special attitude toward himself. Regardless of whether this is a sincere or a trick, this tactic will always have a serious effect when used skillfully.

6. Proving the authenticity of expressions

It is a serious matter to prove the authenticity of the statement in court practice (15, 111). Initially, the person who gives non-normal, surprising, descriptive expressions should make a convincing statement that they are real. Otherwise, such expressions can turn against him. For example, a victim of sexual harassment exaggerated the incident and stated in the testimony that the accused had a cold weapon and was threatened with a cold gun. When this detail does not confirm its accuracy, it is doubtful that the accuser's claim is generally questionable and is in the interest of the accused.

7. Mutual (interactive) style

During interrogation (confrontation), the accused establishes a summary of the events in his speech based on special logic methods. The judge interrupts the accuser's testimony and issues questions to witnesses and lawyers, and the testimony of the accused turns into a multilateral dialogue (16, 16). In such cases it is important that the accused to be prepared and careful for the expected questions.

8. Mixed Expressive Speech

Sometimes the accused go to different destinations in their speeches and talk about different topics. This form is known to the practice of judging where expressions cannot easily be adapted and such statements are often objectively assessed. In the American and European courts, lawyers or defendants have raised questions to witnesses and use their practice of directing them to give testimony in their favor. One of the most difficult things in the practice of judging is to define the limitations of such situations. In most cases, such questions can cause the other party's objection, and the judge has to decide whether to accept or reject that objection.

Talking about the tactical aspects of the defense speech, it is also important to touch on the peculiarities of judicial culture in the Islamic East. Formation of court speech culture in Arabic-speaking civilization can be viewed as a cultural heritage that has passed through a multi-

century historical development, which is a peculiar, world-wide development of the world's culture of speech, many aspects of learning for us. Our country is located in a unique geographical area, located at the intersection of West-East civilizations, synthesizing certain cultural features of both civilizations. Therefore, the development of the future cultural development of our country, including the development of court speech culture, should be based on the conceptual framework of the most progressive examples of both civilizations. As President of the Republic of Azerbaijan, Mr. Ilham Aliyev has repeatedly stated, our country has been able to create an example of multiculturalism for the world. In order to go further in this area, we believe that these issues are important.

Within the framework of this research, the works of prominent scholars who have studied the judicial culture of Eastern countries have been studied. Here, we hope to give a subtotal of the content of those works and to contribute to the creation of a useful knowledge system for judicial practice.

It is not necessary to carry out an active defense during the execution of the criminal justice of the Islamic countries. The accused may also be silent on the grounds of the charge against which he/she is accused. Based on the right of deprivation of liberty, the principle of non-compulsion of the accused himself to be charged and incriminated to his active involvement (nemo-tenetur seismum accusare) is based. The right to silence is considered to be a passive right, but does not prevent the accused from actively participating in the judiciary. The right to freedom is not related only to the action of the accused person, but to all kinds of legal proceedings. The principle of freedom of the accused is based on this right. This situation can not be used against the accused if he uses the right to defend himself. Proof of any act of conviction is considered to be the responsibility of the prosecution (9, 21).

We must note that the accused is not active outside the investigation. The defendant's ability to exercise defense rights in the broader sense of the advocate, or alone, depends only on his rights. In practice, we see a lawyer in the broad sense as a real owner of defense. The lawyer's personal protective function is usually incomplete. In other words, except the investigation process, only the advocate is an active party in the court process as a defense party.

The right to use collective defense by a lawyer in criminal proceedings does not mean that the removal of individual protection is restricted by the right of the accused. In this case, individual and public (collective) defense is being implemented together. The individual defense is maintained by the accused and the public defense is detained by the lawyer. For this reason, it is not always possible to explain the representative connection between the accused and the lawyer in the

court. As noted, the lawyer does not represent the accused, but supports the legal defense of the accused or helps him / her in the preparation of defense. How the lawyer will fulfill these duties and what rights he was indicated in the Figh code.

Defending techniques during speech can help alleviate feelings such as stress, sin, conscience, and humiliation. This is more of an automated reaction, and in many cases it is unaware of himself/herself (18, 10).

In the course of the defense, defense mechanisms are the methods of behavior that the judge finds by following the behavior of the prisoner before him. After examining such defense mechanisms, the following terms were created. Examples of the use of these mechanisms are based on information obtained from those individuals. Individual uses a variety of defense mechanisms, one or two defense mechanisms. Their most common types are:

Denial: The accused avoids the responsibility of behaving in a way that creates public dissatisfaction and results in self-injury. Expressions like "I did not do", "It did not happen" and "They did not tell me" are quite common among individuals using the denial mechanism. The allegations of the individual can be contradictory to the words previously spoken or to the information available to the psychologist (21, 33).

Diversion: The accused accuses somebody or something weaker than himself / herself. A civil servant who is very little critical about the manager can not control his nervousness against his weaker colleague. The true roots of the behavior of an individual may arise from the words he speaks or from the psychologist's research (21, 30).

Imitate Others: The accused person admires a person or group and tries to repeat their attitudes. Individuals may be weaker in prestige, power, and glory. A person who is less self-affirming may be able to imitate the behavior of admired person or group (22, 65).

Abstract Concealment: The accused uses logical and analytical expressions, thereby tries to impress. The high level vocabulary used by the individual also covers technical and scientific concepts. In abstract concepts, abstract and intelligent words (21, 21) are not used in the abstract mechanism.

Reflection: The accused directs his feelings such as, anger, dubiousness, fear, frustration, and love to the judge and other individuals. The judges and other individuals do not show similar attributes and behaviors to his/her speech. Sometimes, in this case, the accused is angry and aggressive about the judge (21, 21).

Logical appearance (rationalism): The accused does not accept responsibility for the difficulties he/she faces, and he / she accuses other people and situations. It's like trying to save himself. Individuals typically state their position in a convincing and appreciated form and

resist the assessment of other disclosures. Individuals often complaining and being complaint of judges may be shown as an example to this situation (21, 22).

To react: The accused becomes very excited and extremely cautious when interpreting definitive and ethical judgments. Individuals, while complaining about others, are talking about their exemplary attitude. Particularly, he/she is based on purity, system and sex. The accused can act aggressively and make unacceptable statements of sexual nature. The rapid change in the cause of the individual's behavior can lead to the appearance of salient patterns of behavior (21, 22).

Decline: Any maturation in the actions of the accused is seen. He/she can say that he/she is more reliable and more perfect in his past life. It is possible to show many reasons, such as addiction, stubbornness, and attraction during the use of this defense mechanism. For example, an individual cries when he is talking about subjects covering social responsibilities or silent on a regular basis (21, 27).

Hiding Senses: Individuals do not want to discuss certain issues or difficult to remember those events. The judge may have previously received information about the circumstances of the person who spoke or did not report very little in the debate, and in particular the cases of shame, guilt, or fear. The accused may refuse to speak sensitive topics such as, sexual life, aggression, or parenthood.

Correction: The accused makes some movements related to the past behaviors that need to be changed or modified. In particular, the judge believes that the person reacts exaggeratedly in the result of any mistake.

The process of defense speech can be studied in three consecutive stages of the speech process:

a) The person accused of initiation or intercourse can feel the difference in defense responses;

b) During an integration, the second phase the accused understands why and how to use the defense mechanisms;

c) In the latter merger phase, the accused is able to draw up a defense speech used to a more acceptable level.

In many cases, it is pointed out that a systematic sequence is necessary to formulate defensive speeches, from the point of view of unifying till awareness. Without disclosing thoughts and feelings, confronting the accused with his/her defense mechanisms increases his resistance and further enhances the usage of the defense mechanisms. To accuse the defense speech in aggressive forms is called a metaphorical "defamation of defense." This situation extends extremely the accused and increases his resistance. The stages of the psychological influence are achieved through the skillful manipulation of the rhetoric of defense applications (22, 105).

Contact stage

The objectives of this first stage are to define the defense tactics chosen by the accused and to support him/her when he/she reacts aggressively reactions. In defense speeches, the defense speeches that people use in their aggressive situations are widely used. The reason for this is the fact that the parties to the conflict are often non-professional lawyers, who usually conduct the conflict based on their personal life experience.

Emotions that can not be avoided are the main motives for guiding the defendant's speech. Therefore, the accuser's lawyer must feel the emotions he/she has suffered. It is important to approach the person with sensitivity, to explain his/her feelings and to tell the court.

While lawyers may limit the use of objective tests, it is also possible to better understand and communicate with those who speak through such tests. Methods such as completing sentences, drawing pictures, recalling past memories are important in understanding the identity of the accused and understanding the defense mechanisms he/she uses. It should be taken into consideration that teenagers who use defense tactics without disclosing the circumstances of the case sometimes find it difficult to recall past memories.

In determining the defense tactics of the accused, it is important to pay attention to how he completes his sentences. In particular, it is possible easily to detect defense mechanisms called "logic" (20, 317).

These issues related to court speech tactics have been studied comprehensively by M.Hocson, C. Brown (19,589; 17).

Merging stage

It is possible to pass through the merging stage of the defendant's speech only after a positive communication has been established. It is understood that they are fragile, they are discovered. The objectives of defense tactics are investigated and explained to him/her why and how to use these tactics.

The main issue at this stage is the confrontation that the judge implements. During the confrontation, the changes in the behavior of the accused are more focused. His/her words and behavior, as well as the discrepancies in his speech before and after, are disclosed by a lawyer-psychologist. It is also necessary to detect the wrongdoing of the accused, as well as the issues that he or she enters in silence (21, 8).

During the confrontation there should not be a prosecution tone, should be treated with understanding and kindness. The lawyer is trying to understand the purpose of the defense mechanisms used by the defendant in the courtroom, and may also provide explanations. Contradictions between past attempts of the accused and the present state are interpreted. When commented, the defendant should be given

time to understand, and this process should be done professionally and in dignity.

Integration stage

The stage of integration is a stage in which sincere behaviors, more accurate and appropriate ideas and feelings are combined. Speaking at this stage pleases the discussion of changes in behavior. The denial used as a defense mechanism has now been regarded as a means of concealing truth and leading to individual defeat. At all stages of the consultation process, the judge's behavior should encourage the defendant and instill confidence in his / her free will. In the stage of integration, this encouragement intervention is particularly useful (21, 19). Abstract Concealment: The accused uses logical and analytical expressions, thereby tries to impress. The high level vocabulary used by the individual also covers technical and scientific concepts. In abstract concepts, abstract and intelligent words (21, 21) are not used in the abstract mechanism.

Reflection: The accused directs his feelings such as, anger, dubiousness, fear, frustration, and love to the judge and other individuals. The judges and other individuals do not show similar attributes and behaviors to his/her speech. Sometimes, in this case, the accused is angry and aggressive about the judge (21, 21).

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received information about the circumstances of the person who spoke or did not report very little in the debate, and in particular the cases of shame, guilt, or fear. The accused may refuse to speak sensitive topics such as, sexual life, aggression, or parenthood.

However, since the defense mechanisms are habit-forming, new forms of behavior are not easy to achieve. For this reason, many individuals need high-level support to build more effective behaviors. At this stage, it is useful to use the science-behavioral techniques. The usefulness of these techniques can enhance the sense of success of the accused. Another method may be to behave in a more desirable way in the behavior that the accused wants to do. For example, an accused person using the denial mechanism takes responsibility for his/her behavior within a day or a week.

Another way is to avoid the use of this mechanism by seeing the moment when the prisoner will use the defense mechanism and also to record the number of such cases. This can be done within a certain period of time. The accused can enjoy these results and also control his/her behavior.

References:

1. Ackerman and Wolman, 2007,
P. Ackerman, S. WolmanDeterminants and validity of self-estimates of abilities and self-concept measures, Journal of Experimental Psychology: Applied, 13 (2) (2007), pp. 57-78, 10.1037/1076-898X.13.2.57
2. Archer et al., 2010,
L. Archer, J. DeWitt, J. Osborne, J. Dillon, B. Willis, B. WongDoing science versus being a scientist: examining 10/11-year-old schoolchildren's constructions of science through the lens of identity, Science Education, 94 (4) (2010), pp. 617-639, 10.1002/sce.20399
3. Arens et al., 2011, A.K. Arens, A. Seeshing Yeung, R. Craven, M. HasselhornThe twofold multidimensionality of academic self-concept: domain specificity and separation between competence and affect components, Journal of Educational Psychology, 103 (4) (2011), pp. 970-981, 10.1037/a0025047
4. Bøe and Henriksen, 2015, M.V. Bøe, E.K. HenriksenExpectancy-value perspectives on choice of science and technology education in late-modern societies
5. E.K. Henriksen, J. Dillon, J. Ryder (Eds.), Understanding student participation and choice in science and technology education, Springer, Dordrecht (2015), pp. 17-29, 10.1007/978-94-007-7793-4_2

6. M.V. Bøe, E.K. Henriksen, T. Lyons, C. SchreinerParticipation in science and technology: young people's achievement-related choices in late-modern societies, Studies in Science Education, 47 (1) (2011), pp. 37-72, 10.1080/03057267.2011.549621

A. Bandura Self-efficacy: toward a unifying theory of behavioral change, Psychological Review, 84 (2) (1977), pp. 191-215, 10.1037/0033-295X.84.2.191

7. R. Baron, D. Kenny. The moderator—mediator variable distinction in social psychological research: Conceptual, strategic, and statistical considerations, Journal of Personality and Social Psychology, 51 (6) (1986), pp. 1173-1182, 10.1037/0022-3514.51.6.1173

8. L. Bol, D. Hacker, P. O'Shea, D. Allen. The influence of overt practice, achievement level, and explanatory style on calibration accuracy and performance. The Journal of Experimental Education, 73 (4) (2005), pp. 269-290, 10.3200/JEXE.73.4.269-290

9. M. Bong, R. Clark. Comparison between self-concept and self-efficacy in academic motivation research

10. Educational Psychologist, 34 (3) (1999), pp. 139-153, 10.1207/s15326985ep3403_1

11. CrossRefView Record in Scopus

12. Bong and Skaalvik, 2003

13. M. Bong, E. SkaalvikAcademic self-concept and self-efficacy: how different are they really?

14. Educational Psychology Review, 15 (1) (2003), pp. 1-40, 10.1023/A:1021302408382

15. CrossRefView Record in Scopus

16. Bong, 2001

17. M. BongRole of self-efficacy and task-value in predicting college students' course performance and future enrollment intentions

18. Contemporary Educational Psychology, 26 (4) (2001), pp. 553-570, 10.1006/ceps.2000.1048

19. ArticleDownload PDFView Record in Scopus

History of Azerbaijan people and Formation of its Language in Iranian Historiography

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Abstract

In an era of globalization where the world has moved into an international mass information space, there are still many researchers in Iran who solely rely on the un-scientific and unreasoned hypotheses of Ahmad Kasravi postulated 100 years ago. These researchers choose to defend and propagate the untenable view that Azerbaijani Turks who make up more than half of the Iranian population, as well as Kurds and Arabs living in Iran are descendants of fictitious "Iranian race" and they were forced to convert to Turkish, Kurdish and Arabic speakers because of inauspicious turn of historic events. This propensity derives from the fact that the Persian language retains its indisputable supremacy status in Iran to this day. Despite the fact that lawful educational rights of Azerbaijani Turks have been enshrined in the constitution, the Azerbaijani Turkish is not used as a medium of instruction in a single educational institution, nor is the language taught as a separate subject as a part of accepted curricula across the country. At a time when Turkish is growing and thriving as a state language in the Republic of Azerbaijan and Turkey and spoken by millions of Turkish speakers beyond the boundaries of these countries, Azerbaijani Turks living in Iran are totally denied the opportunity to practice their basic right of receiving an education in their own language. This article explores and criticizes the falsifications and distortions in Iranian historiography in this respect.

Keywords: Azerbaijani Turks, Azerbaijani Turkish, Iranian Historiography, Kasravi, native language, national identity, ethnicity.

Introduction

Before delving into an in-depth exploration of chronicles and articles in Iranian historiography on formation of Azerbaijani people and its language, it would be useful to have a cursory view of the historic geography of Azerbaijan.

It is noteworthy to start here with a reference to the Tarikh-e Balami of Abu Ali Muhammad, the 10th century historian by the renowned academician of Iran, Professor Javad Heyat in his article on "The Name and Borders of Azerbaijan". The chapter on "The Conquest of Azerbaijan and Khazars" of the above-mentioned book states the following: "There were Ajam (non-Arab) fire-worshipping temples and Ajams used to call fire "azer" in Pahlavi language. This is the reason why this place was called Azerbaygan at the time. The borders of Azerbaygan started all the way from Hamadan, including Abhar, Zanjan, and ending in Khazars' Darband. All the cities in between were a part of and referred to as Azerbaygan...and all these lands were ruled by Turks" (1).

According to Ahmad Kasravi, the well-known Iranian historian, the geographical term Azerbaijan most probably derives from the name of a local commander, Atrupat who ruled over the region when Alexander the Great invaded Iran in 330 BC. Aturpat, whose name means Guardian of Fire, and his descendants ruled over Aturpatkan (Azerbaijan) for centuries-a region where "the fire-temples were very common" (2:8).

Historically, a one third of Azerbaijani territory was located within the boundaries of current Republic of Azerbaijan, and approximately a two third of its land was situated in the territory of the present-day Islamic Republic of Iran, namely in the ostans (provinces) of East Azerbaijan, West Azerbaijan, Zanjan, Gazvin, Hamadan and Ardabil. The "Iran Today" encyclopedia published in 2008 indicates the number of Azeri Turkish speaking people as 23 million who live in north-west provinces of Iran which were historically Azerbaijani provinces (3:56). This said, it should not be forgotten that millions of Azerbaijani Turks also live in the capital city of Tehran along with other cities of Iran such as Karaj, Saveh who have not been included in this population count.

According to Iranian historians, the human habitation of Azerbaijan began around 6000 BC. During the Akhaemenid period, Azerbaijan was a part of the satrapy of Media. After the Akhaemenid Empire collapsed, Atropates, the Persian satrap of Media, claimed the independence of his region in 321 BC. He managed to remain in good

terms with Alexander. As stated in Greek sources, Artabazanes, the successor of Atropates later submitted his power to Seleucid suzerainty. During the Sasanid period, this land fell under the rule of Sasanids and was officially named Atropatene (Aturpatakan). During the early Islamic Caliphate, Azerbaijan was governed as a separate province covering the low lands between the western shores of the Caspian Sea and Araxes River. Two cities of Ardabil and Maragha have been mentioned to be the major central cities at the time. Arabic sources mention Azerbaijan as the birthplace of Zoroaster. Azerbaijan fell to Arabs during Omar Caliphate. Seljuk Turks, the Oguz Turkman expelled from Khorasan by Sultan Mahmud arrived in Azerbaijan around 1029. After the decline of the Seljuk Empire, Hulegu put an end to the Caliphate of Baghdad in 1258 and made Maraga his capital. In 1501, Shah Ismail made Tabriz his capital. During the Qajar dynasty, Tabriz remained as the second city of Iran and the seat of Valiahd – the crown prince. Tabriz and Azerbaijan continued to play a leading role in constitutional movement of 1906 in Iran. After WWI, Sheikh Muhammad Khiyabani rose to prominence in 1920, proclaimed Azerbaijan to be Azadistan, disputing the central government's power over Azerbaijan in Iran.

In September of 1941, Allied forces pressured Reza Shah Pahlavi out of office in Iran. During the 16 years of Reza Shah's rule, Azerbaijanis had felt totally neglected and the use of Azeri Turkish was forbidden in favor of the Persian language. Reza Shah's repressive measures to consolidate his power and suppress heterogeneous tribal, religious, and ethnic forces in order to create a unified nation had left the government in Tehran much more vulnerable. Therefore, Azerbaijanis took this opportunity to start publishing newspapers in their native Azeri Turkish language and asserting their identity through a number of social and political moves. Supported by occupation forces in 1945, the Democratic Party of Azerbaijan was established, and Mir Jafar Pishavari, a highly educated nationalist, was elected a premier of the Autonomous Azerbaijan (National Government of Azerbaijan) by the National Assembly. During the one-year rule of the Democratic Party of Azerbaijan, Pishavari instituted a substantial land reform and initiated significant developmental and infrastructural works. The Azeri Turkish was recognized as the administrative language, and school children were finally able to learn their mother tongue.

But, with the withdrawal of the Soviet army from Iran under the pressure exerted by UN and U.S., central government forces toppled the National Government of Azerbaijan, executing party members and killing many others. Key members of the Democratic Party of Azerbaijan fled to the Soviet Azerbaijan.

It is necessary to state that historical territory of Azerbaijan was divided into two parts under peace treaties of Gulustan (1813) and Turkmanchay (1828) concluding the Russian-Iranian war of 1805-1813 and 1826-1828 respectively. As a result of these treaties, the territory of Azerbaijan remaining in the north of the river Araxes was given to Russia. Despite colonialist policies of Tsarist Russia and its consistent attempts to alienate Azerbaijani people from Ottoman Turks and Turks residing in Iran by various repressive measures such as renaming the Turkish language as Tatar language and referring to Azerbaijani Turks as Tatars, the Azerbaijani people were able to preserve their language (Azerbaijani Turkish) and create a rich scientific, literary and artistic literature throughout this time. It was only during the short lifespan of the Democratic Republic of Azerbaijan (28 May 1918-28 April 1920) that Azerbaijani people gained the opportunity to advance their national language and culture in their own independent state. It needs to be mentioned that since the beginning of the 19th century, the ancient city of Azerbaijan, Darband had been given to Russia, and a wide swathe of lands, including a number of cities and villages which had been populated by Azerbaijani Turks through all the periods of history were handed over to Armenia and Georgia during the occupation of Southern Caucasus by the Bolshevik Russia. Nevertheless, resilient Azerbaijanis (Azerbaijani Turks) managed to retain their native language and culture and transfer it intact to generations following them.

The Azerbaijani khanates (kingdoms) falling under the Iranian rule after the Russian-Iranian war were amalgamated to one of the four provinces after the administrative division of Iranian territory under the Gajars' rule (1795-1925) was complete as a part of measures to restore and strengthen the central governance. Previously, Azerbaijan was a region located in the north-west of Iran populated of entirely by Turks (Azerbaijani Turks). The majority of this region encompassing the main territory of the aforementioned provinces is still populated by Azerbaijani Turks today although millions of Azerbaijanis have also been spread to the capital city of Tehran and other provinces of Iran. It is remarkable that Azerbaijanis living in substantial masses outside the main provinces habituated by Azerbaijanis have also somehow succeeded in conserving their national language and culture despite the strong ongoing assimilation processes in the country. As according to the results of censuses carried out in Iran in different years, the Azerbaijani Turks compose more than one third of the Iranian population in general [4:23]. Therefore, it can be stated with certainty that Turkish (referred to as Turki in Iran, E.M.), the mother tongue of the Azerbaijani Turks is the second largest language spoken in Iran after Persian in terms of its widespread usage. Furthermore, given the fact that the Azerbaijani

Turkish is the major medium of interaction for all Iranian Turks living outside the historic boundaries of Azerbaijan, it can be concluded that almost half of the Iranian population are either native speakers of this language or have some level of proficiency in it. It also has to be taken into consideration that this is exactly the same language as the one spoken by 10 million Azerbaijani people living in the Republic of Azerbaijan. This commonness in language has always been and is a major contributing factor in establishment and maintenance of close neighborly and friendly relations between Azerbaijani and Iranian people.

As confirmed by majority of Iranian historians, as well as many language and literature experts, Azerbaijani Turks have played a significant role alongside Persian people in evolution and development of ancient Iranian culture. Residing in Iranian territory and South Caucasus since the 3rd millennium before century, Turks had shared a close communal life and cultural interaction with Arians who had then migrated to this region from the north India and whom Iranians consider to be their forefathers. Their common destiny was shaped by tumultuous historic events of later centuries. During the reign of Sasanids (224-551), the Iranian territories spanned over the present-day South Caucasus as well. In 6-11th centuries, the advent of Islam and 500 years of Arab rule in the region brought about integrated life for nationalities representing diverse languages and cultures which paved the way for development of shared religious-spiritual values.

Starting from early 7th century, folk samples in Azerbaijani Turkish started to appear. The pinnacle of the folk work of this period was a monumental piece of Dada Gorgud epos which became a spiritual artifact for all Turkish nations. In later centuries, as official policies of Arab caliphate gained leverage and Islamic culture took hold many Azerbaijani poets started to compose their poems in Arabic. Dozens of poets, philosophers and scientists from Azerbaijan were educated at then famous Nizamiyya madrassas (educational institution) in Baghdad. But, as Turkish dynasties ascended to power in a wide regional geography in and around Iranian territories and as Arab caliphate started to decline gradually starting from 11th century and disintegrated eventually, the Persian language was rejuvenated, thus becoming a primary language of poetry and literature in much wider region. A number of renowned Azerbaijani poets were also creating ever-living writings in Persian along with Turkish both during the reign of Seljuk Empire and throughout the 12-14th centuries. Nizami Ganjavi, who lived all his life in Azerbaijani town of Ganja in 12th century, courageous poetess and musician Mahsati Ganjavi, Khagani Shirvani who lived and worked in Shamakhi, the capital city of Azerbaijani state of

Shirvanshahlar-all contributed invaluably to the development of Persian poetry outside Iran at the time. Regrettably, an illogical and unreasonable tendency to ascribe a Persian identity to these Azerbaijani poets just because they wrote in Persian language is still continuing among the Iranian researchers to this day.

It needs to be highlighted that Turkish (Azerbaijani Turkish) had a pivotal role at state official level as well along with being used as a language in literature and academics together with Persian both during the 11-15th centuries when various Turkish dynasties were in power in Iran and throughout 15-19th centuries, when dynasties of Azerbaijani Turks - Garagoyunlus, Aghgoyunlus, Safavids, Afsharids, Gajars were ruling Iran. Turkish was even raised to the level of a state language and was widely used in diplomatic correspondence in Iran during the rule of Safavid dynasty of Azerbaijani-Turkish descent (1501-1736). Like his contemporaries, Shah Ismayil, the Safavid King, composed his famous diwan (collection of poems and ghazals) in Turkish language.

The spread of Azerbaijani language, the local branch of Turkish, was so expansive by the beginning of the 16th century, the time when Shah Ismail established the dominion of the Safavid dynasty in the region, there was scarcely any trace of the old Azeri, and by then Azerbaijani was "the common language of the people of Azerbaijan" (5:25).

When Iran was ruled by Afsharid dynasty of Turkish origin, Turkish language was always in use among ordinary people, in imperial court and army, even in official correspondence of Nadir Shah. When Nadir Shah deceased in 1747 and the central government's demise started to unfold in Iran, the Azerbaijani Turkish became unequivocally a leading language in the khanates which were formed in the historic lands of Azerbaijan. During Gajars' rule, although the state and official correspondence was carried out in Persian upon the order of rulers of Azerbaijani origin themselves, the use of Turkish in the Azerbaijani provinces as the main medium of communication was by no means prohibited. The prince sitting in Tabriz, a capital city of Azerbaijan in Iran, who was an heir to the Iranian throne and many other prominent people in power spoke in Turkish all the time. Majority of Azerbaijani Turks in Iran lacked basic proficiency in Persian at the time.

Azerbaijani Turks played an active role in social and political movements taking place in Iran under the influence of Russian revolution and far-reaching upheavals both in the region and in the world at the beginning of the 20th century [6]. The frontrunners of constitutional revolution who demanded the ousting of absolute monarchial regime in Iran and establishment of parliamentary kingdom were led by Sattar Khan Sardari Milli and Baghir Khan Salari Milli.

These outstanding figures and their close associates were of Turkish origin and obviously they spoke in their native language. All the folk music and tales devoted to their valor was also in Turkish. There is a widely known saying in Iran that goes like this: Farsi shekkar ast, torki honar ast- Persian is a sweet, Turkish is an art. Mahammad Huseyn Shahriyar, the great poet of Azerbaijan and Iran has glorified Turkish by extolling it in these verses:

Türkün dili tək sevgili istəkli dil olmaz, Özgə bir dilə qatsan bu əsil dil əsil olmaz. (There is no other language as beloved as Turkish, if you mix this noble language with any other language it will lose all its genuineness).

In 1918-1920, the formation of the independent Democratic Republic of Azerbaijan in the northern part of historical Azerbaijan annexed to Russia in 1828 and declaration of Turkish (Azerbaijani Turkish) as the official language of the state impacted the national sentiments and resurrection movement in Iran to a great extent. Azerbaijani National Government (April-September 1920) which was formed as a result of Tabriz revolts against kingdom regime in Iran in 1920 was led by a reputable Azerbaijani thinker, who was raised in a religious family and was therefore referred to as Sheykh Mahammad Khiyabani. Turkish was an officially declared state language of this short-lived government and was the main medium of communication in correspondence and daily interactions [7:96-97].

During this time, Gajars' powerbase was gradually debilitated both because of persistent internal frictions and conflict of interests of international players in the region. Consequently, in 1925, Rza Khan came to power with a feigned claim on a fake family lineage of Pahlavi and commenced a policy of systematized persecution against Azerbaijani Turks and Turkish language. Under the slogan of unifying Iran as one nation speaking a unified language and under the pretext of reviving the grandiosity of Iran and restoring great traditions of Sasanids' era, Rza Khan started oppressing Turkish, the second most widely spoken language in the country. Banning usage of Turkish, as well as Kurdish, Arabic and other minority languages became an accepted policy in Iran during the reign of Rza Khan. In reality, Rza Khan who was a military serviceman by profession had no family ties to Pahlavis as he was a son of an impoverished Turkish man, Dadash bey. Hence, his efforts were aimed at nothing else but preserving and strengthening his clout in power [8:539]. Rza Khan had started his military service as an ordinary gunner in kazak brigades created by Iranian shah with the close assistance of Russians. He participated ferociously in quelling the revolts and uprisings against the Iranian Shah at the time. He later became a distinguished colonel for his military acumen and attracted the attention

of the British. It was with the help and complicity of the British that Rza Khan was able to become a Grand Vizier, Minister of Defense and Commander-in-Chief of armed forces, and later the Iranian Shah [9:157]. In coronation ceremony, a noblewoman from Gajars dynasty had shouted at Rza Khan calling him a throne robber. Unmoved, he had responded with unaffected calm that he had saved the Iranian throne from being treaded under the foot.

Although Rza Khan was not a sophisticated man in terms of his educational background, he understood the realities and callings of the 20th century fairly well. Therefore, on the one hand, he was trying to push ahead with the similar reforms carried out in neighboring Turkey by Mustafa Ataturk for the sake of enlightenment and cultural development of his country, but on the other hand he had issued strict orders to the Ministry of Education to extend the ban on use of Turkish (Azerbaijani Turkish) from classrooms even to corridor chats during break times. At a time when Azerbaijani Turks were demanding increased rights to be able to practice their native language in Iran freely, instead of trying to address these legitimate concerns at least partially Rza Shah had ironically ordered the high-level state servants to carry out an assimilation policy of ensuring marriages between Azerbaijani men and Persian women so that their demand on "mother tongue" would be met through Persian mothers. The fact that there was no access to an education in any other language other than Persian was contributing towards growing illiteracy among millions of Azerbaijani Turks.

Rza Shah was intent on assimilating all languages, nations, cultures into the dominant Persian identity as he believed Iranian identity was derived from the high Arian race and all other identities were subcultures to serve to the formation of a unified Iranian nation and Persian was a single legitimate language in the country. It was not permitted to publish books and newspapers in any language other than Persian.

To achieve a greater national uniformity, in January of 1938, Rza Shah ordered a government office called the Sazeman-e Parwaresh-e Afkar (the Department for Fostering Thought) headed by Minister of Justice to be instituted (10:143). This course of policy gave rise to partial and biased views in Iranian historiography. The magazines Iranshahr (Land of Iran) and Ayandeh (The Future) were pioneers in publicizing these detrimental views. Iranshahr was first published in Berlin in June 1922 by Hoseyn Kazemzadeh. During the five years of Iranshahr's publication, 48 issues came out altogether and almost in all issues a special attention was devoted to the history, language and literature of Azerbaijan.

The Pahlavi era beginning with Rza Shah, was signified with a cultural and political nationalism based on Iran's pre-Islamic past as their

state ideology. However, until the 1960s there was a special care not to go beyond a certain point in this regard. But this cautious approach ended when Mohammad Rza Shah went out of his way to over-emphasize the pre-Islamic past. The Shah excessively underscored the institution of monarchy as the foundation of Iranianism, ignoring other aspects of pre-Islamic Iranian culture. He markedly stressed the ethnic, namely Aryan element in Iranian identity and glorified his own image by calling himself Arya-Mehr-the Light of the Aryans (11:54). As stated by Dr. Sh. Hunter, it was the process of modernization and especially some of the excesses of the last Shah's era that turned a competition into an outright confrontation, and identity-related issues became extremely politicized (12:55).

Historians became blind ideologists whose main mission was to bolster Shah's claims on superiority of Iranian identity through concocted academic validations of his proclaimed theories. They tried to academically prove that people of all other nationalities had migrated to these lands at later periods in history and their languages had descended from Persian. Although always met with stiff resistance by speakers of non-Persian languages who never ceased to demand their legitimate rights, this destructive trend in historiography of Iran continued throughout the reign of Shah's regime until 1979 when it was finally ousted.

Among the historians who served to endorse and corroborate high-handed Pahlavi language policies, undoubtedly the most renowned and impactful was Seyid Ahmad Kasravi Tabrizi (1890-1946) who was himself in fact of an Azerbaijani origin. His insightful writings on history, linguistics, philosophy, culture, politics, society, religion, law, economy and many other subjects became frequently referenced sources for Iranian researchers in generations. Although his views on Iranianism, nationalism, religiosity and statehood were innovative and ground-breaking in many ways, they were not devoid of evident contradictions and inconsistencies. For instance, despite the fact that he was fiercely advocating the annihilation of Sunni-Shia sectarianism and formation of a unified Islamic religion to which he used to refer as "a pure religion", he was also considering it vitally indispensable to eliminate all linguistic, nationalistic and cultural distinctions to create a unified Iranian identity and achieve a dominance of Persian language. According to Ahmed Kasravi, without a greater degree of national cohesion and elimination of warring between ethnic, sectarian, and other factions, Iran would never achieve a real progress. He wrote that the reason why all the other previous reformers had failed was to be attributed to the divided nature of Iranian society. He added that, in order to cure Iran's ills, "we must save people from corrupted superstitions, instilling in them a love of

their country, arousing in them the instinct of a sosial progress, teaching them to make personal sacrifices, and most important of all, uniting them as nationally conscious people"(13:46).

One of the prominent and well-known articles of Ahmad Kasravi in this respect is on "Turkish Language in Iran". According to an Iranian scholar Dr. Javad Heyat, this article was initially written in Arabic and published in Syria, in the journal of "Al-Irfan". Then the article was first translated to English by Professor Evan Zegal and later on to Persian language by the Harvard professor Dr. Shahabi. Renowned researcher Ahmad Amir Farhangi also published this lengthy article as a booklet in Tehran [14:1]. It is worth mentioning that unlike his writings and articles published in Iran, in this article Ahmad Kasravi did express some objective and impartial views on the origin of Azerbaijani Turks and Turkish language. For instance, he states that the present-day Turks of Iran descend from their forebear Turks who migrated to Iran in ancient times from Turkustan for the purpose of residence and herding, and who later settled in various parts of the country. This postulation can be considered to some extent valid and accurate, but it has to be highlighted that even before Arian tribes moved into Iranian plateau, there were many aboriginal nationalities, including indigenous people comprising Turkish tribes who were already residing in these highlands. Nevertheless, it's absolutely praiseworthy that Ahmad Kasravi has at least not attempted to trace the origin of Turks in Iran to 12-13th century as many Iranian historians have tried to do so with no historical proof or academic basis. Ahmad Kasravi goes on to characterize Turkish language in these terms: "Azerbaijani Turkish is a well-developed and progressive language which bears all the features and advantages of strong, creative and resourceful languages. Although not extensively used in written format, Turkish language has some unique and distinctive peculiarities that differentiate it exceptionally from a number of advanced languages of the world". [15:496] Interestingly, in this article Ahmad Kasravi draws attention to the diversity of verbal forms in Turkish language and notes that the grammar of Turkish is based on more stable and established rules as compared to Persian and Arabic. The author makes a notable confession in the article which is worth invoking here. He remarks that although he cannot be definitely sure about the state of Turkish language during the Hulaki and his sons' reign (13-14th centuries, Mogul rule-E.M.), all the documents which have reached us and which can be taken as valid proofs indicate that Turkish was always subjected to all kinds of harsh censures, condemnation and suppression in previous centuries, even at the height of the reign of dynasties of Turkish descent in Iran. The conclusion to which Ahmad Kasravi comes at the end of this revealing article is astounding and indeed quiet reminiscent of

inconsistencies in his position and course he took in life. More precisely, he closes his article with this statement that "the fact that the Azerbaijani people have started demonstrating a greater love and support for their native language is indicative of a start of a literary resurrection movement in opposition to deprivation of the legitimate rights of Azerbaijani Turks, their subjection to denunciations, suppression and persecution of their language". [16:498]

It is very striking that in his books published in Iran, Ahmad Kasravi displays an entirely different, a biased and opinionated attitude towards the history, language and cultural heritage of the Azerbaijani Turks living in Iran. Apparently, Ahmad Kasravi was trying to swim with the tide in boosting the propagation of Shah's assimilation policies and clampdown on non-Persians in Iran at the time. In this respect, his book on "Azeri or the Ancient Language of Azerbaijan" is quite noticeable and deserves a special research (17). In this book, he articulates his interpretation of Azerbaijani Turkish being referred to as Azeri by some European thinkers, by drawing a reference to a quotation from a book called "Mojamul-Buldan" by Yagut Hamavi, a 13th century Arabic geographer on Azerbaijan which goes as "they speak a semi-language which is called Azeri and nobody except themselves understand this language". After citing this unreliable source without any due checks on its validity and academic accuracy, Ahmad Kasravi proceeds to describe Turkish Language as an offspring of Persian. Without drawing on any proven sources or evidence, Ahmad Kasravi hastily determines that "until the first centuries of lunar calendar the Azerbaijani people were Arians or Aris, therefore their language is no more than a sure descendant of Persian language". [18:9-10]

In the section on "Early Turks in Azerbaijan", Ahmad Kasravi writes that "early groups of Turks migrated to Azerbaijan during the reign of Sultan Mahmud Gaznavi", and then he continues to comment that "our researches demonstrate that Turki (Turkish language-E.M.) came to the region with migration of Turkish tribes during the Seljuk Empire" [19:15]. As it is manifest, the author contradicts himself and refutes his earlier views on migration of Turks to this region in much older times as stated in his above-mentioned article published previously outside Iran. He ignores all historical sources documenting the voyage of tribes of Turkic origin, Huns, Sabirs, Khazars, and Bulgars, to Azerbaijan in the 4-5th centuries A.C. The author also disregards the historical fact that Turkish tribes consisting of Gokturk tribes had arrived to Iran during the Sasanids' rule (3-7th centuries A.C.) and they were settled in Azerbaijan at the order of the Sasanid ruler, Anushiravan. These facts have been ascertained by Dr. Javad Heyat in his book called "The

Memoirs of Anushiravan" which chronicles the period of Sasanids rule in Iran.

Ahmad Kasravi also elaborates upon the claims by Iranian historians on mass migration of Turks to Azerbaijan during Mogul rule and their proliferation in the region in that period: "We cannot conclude that Turkish population grew and burgeoned in the region during Mogul's time as we have no substantial proof to verify this claim" [20:18]. Ahmad Kasravi is certainly explicitly right in this judgment as Turks were residing both in the territory of Iran and Azerbaijan long before Moguls invaded the region, furthermore the region was populated not only with Oghuz Turks of Anatolia, but with Qipchak Turks as well who had migrated to the region from the northern part of Caspian Sea and Caucasus much earlier. Therefore, Turkish was a primary language of conversation and interaction much before the Mogul's presence in the region. However, it has to be emphasized that as asserted by European and Islamic historians as well, more than half of the Moghul army consisted of Turks (it was since this period that Russians coined the Tatar-Moghul phrase as they were referring to Turks as Tatars-E.M.) and majority of army chiefs were composed of Turks. So, there are some facts that during the Moghuls' rule more than 2 million Turks moved to Iran who eventually settled in Azerbaijan. Ibn-Batuta and Ibn Fazlullah-al-Omari who travelled to Tabriz in the 14th century document that the population of Tabriz spoke in Turkish [21:503].

Ahmad Kasravi mentions that Turkish language got a chance to grow and expand in Azerbaijan during the period when Garaqoyunlus and Aghgoyunlus dynasties of Turkic origin were in power. According to him, the height of this growth came during the Safavids' time which was followed by stagnation and regression later on. He states that Turkish was in par with Persian during the rule of Ismayil Shah I and Tahmasib Shah I, but as Abbas Shah I came to power and moved the capital of Safavids from Tabriz to Isfahan, Turkish language also lost its appeal and influence. He goes on to say that "recently, the status of Turkish language has shown a progress instead of deterioration in the context of constitutional revolution and revival of patriotic sentiments". He rightly remarks that "the constitutional revolution was a freedom movement, so it was not meant to entail quashing and destroying the native language of Iranian people". But, as we know Rza Shah's rise to power, dissolution of constitution and reinforcement of radical Persian nationalism hampered the spread and use of Turkish again.

It has to be underlined that in order to authenticate his proclamation on existence of Azeri language as opposed to Turkish, Ahmad Kasravi presents so-called textual and poetic samples which bear no similarity with language of Azerbaijani Turks. These samples belong

downright to Tat and Talish dialects (of Persian) which are not even understood by Persian speakers themselves. For that reason, Dr. Javad Heyat has sensibly stressed that Ahmad Kasravi acts not as an academic linguist researching languages empirically, but more as a professional politician who tries to impose his views on others by distorting the facts and blurring minds. He doesn't mind referring to clearly different dialects as Azeri in order to support his claims on similarity of so-called Azeri language to Persian. He doesn't stop shy of calling for inevitable destruction of Turkish spoken by millions of Azerbaijanis and Iranians for the sake of replacing it with a Persian language.

As reinstated repeatedly by Professor Javad Heyat and Dr. Mahammad Taghi Zehtabi, renowned researchers of Iran, as well as by other respectable historians and linguists of Iran and as reestablished by the expert scientists of the Republic of Azerbaijan, Azerbaijan is considered to be the most ancient land of Turks and all other nations which have migrated to these lands whether it was Sakhs before the century or Bulgars, Huns, Sabirs, Pecheneks, Khazars, Kangars and others who migrated after the century only served to enrich the identity of the Turkic nations already residing in these lands. There was never a language called an Azeri in Azerbaijan as claimed by Ahmad Kasravi and his hypotheses postulating that the Tat and Harzan dialects should indeed be presented the same as Azeri language is absolutely unacceptable (22).

Many more examples can be alluded to here in order to exhibit completely incorrect, unfounded postulations of Ahmad Kasravi to this end. Unfortunately, he laid the foundation in Iranian historiography for utter falsification of ethnicity of Azerbaijani Turks and total distortion of the history of Turkish language. Regrettably, this tendency was carried on and is still continuing today by some researchers (23).

One of followers of A. Kasravi was Mahmud Afshar, who wrote: "The Persian language must become established in all parts of Iran and gradually replace all foreign languages. This task can only be accomplished if elementary schools are founded everywhere, and if laws are passed which make education compulsory and free, and these laws see to it that the necessary means for this are provided." Expressing his consern for an Iranian unity, A. Afshar emphasizes the importance of accepting Persian as the national language of Iran. He proposed some nesesary steps for eliminating ethnic divisions and fostering national unity. He stressed: "Thousands of low-prised attractive books and treatises in the Persian language must be distributed throughout the country, espesially in Azerbaijan and Khuzistan. The means of publishing small, inexpensive newspapers locally in the national language in most remote parts of the country must be provided. All this

requires assistance from the state and should be carried out according to an orderly plan. Certain Persian speaking tribes could be sent to the regions where a foreign language is spoken, and settled there, while the tribes of that region which speak a foreign language could be transferred and settled in Persian speaking areas. Geographical names in foreign languages or any souvenirs of the marauding and raids of Cenghiz Khan and Tamurlane should be replaced by Persian names. The country should be divided from an administrative point of view if the goal of national unity is to be achieved" (24:57).

It is deplorable that a politically motivated tendency which was aimed at serving radical Persian nationalism at the cost of depriving more than half of the Iranian population of their legitimate rights still carries a considerable weight today supported by followers of "kasravism" school of thought. What is more unacceptable is that these perilous activities have long surpassed the boundaries of historical and linguistic researches pervading into Iranian daily newspapers and journals, radio-television broadcasts and mass publications. This subtle theme of pan-Iranism is not overlooked even outside Iran and often times picked up by Iranian authors dwelling abroad as well. Turaj Atabeyi's book on "Azerbaijan, Ethnicity and Struggle for Power in Iran" published in New York and London and translated to Persian in 1997 under the title of "Azerbaijan in Modern Iran", as well as the article on "Where is Azerbaijan?" published in the journal of Iranian Studies (1989, Issue 3) in the United States of America are examples of many works reflecting the same overarching tendency initiated by Ahmad Kasravi [25:7].

It is a source of great disappointment and bewilderment that in an era of globalization where the world has moved into an international mass information space, there are still many researchers in Iran who solely rely on the unscientific and unreasoned hypotheses of Ahmad Kasravi postulated 100 years ago. These researchers choose to defend and propagate the untenable view that Azerbaijani Turks who make up more than half of the Iranian population, as well as Kurds and Arabs living in Iran are descendants of fictitious "Iranian race" and they were forced to convert to Turkish, Kurdish and Arabic speakers because of inauspicious turn of historic events. This propensity derives from the fact that the Persian language retains its indisputable supremacy status in Iran to this day. Despite the fact that lawful educational rights of Azerbaijani Turks have been enshrined in the constitution, the Azerbaijani Turkish is not used as a medium of instruction in a single educational institution, nor is the language taught as a separate subject as a part of accepted curricula across the country. At a time when Turkish is growing and thriving as a state language in the Republic of Azerbaijan and Turkey and spoken by

millions of Turkish speakers beyond the boundaries of these countries, Azerbaijani Turks living in Iran are totally denied the opportunity to practice their basic right of receiving an education in their own language. In Iran, the key calling of the 21st century, endorsement of diversities and support for development of multiculturalism is substituted by purposeful destruction of languages. Therefore, it is of utmost importance and urgency that historians, linguists, and enlightened thinkers in Iran realize their share of responsibility in this unhealthy process.

Thus, the approach that has been developed within this research is a brand new concept in the paradigm of corporate management. A distinct advantage of this approach is its practical importance, as long as such approach allows for the most accurate deter-mination of the optimum type of dividend policy of oil and gas companies. As opposed to the methods that were presented in theory, this original approach relies on determining the quantitative optimum level of dividend payouts of a company subject to the available capital structure. In its turn, this allows for substantiating the type of optimum corporate policy that corresponds most closely to the current financial condition of the company. The adequacy of using polynomial modeling technologies and neural networks for de-termining the optimum dividend policy proves the accuracy of research findings, which is indicative of the practical importance and value of the developed approach. It facili-tates obtaining objective and reliable data regarding the optimization of dividend policy of oil and gas companies under consideration. It utilizes the subjectivity and pragmatism of qualitative approaches to maximizing the market value of a company.

The conceptual approach to determining the optimum level of dividend policy of companies that has been developed throughout the research is the basis for improving theoretical and methodological grounds of corporative management. It is described by the simplicity and versatility of its application, as long as it is not limited by regional and industrial attachment of the company. It facilitated justified determination of priorities of dividend payouts, capital structure proportions and development of an effective strategy to maximize the market value of companies against the unstable functionality of the global economy.

References:

1. "Varlik" ("Existence") Journal, Tehran, 1372, the autumn issue.
2. Kasravi, A., Azeri Ya Zaban-e Bastan-e Azerbaijan (Azeri or Ancient Language of Azerbaijan), 2nd Edition, Tehran, Taban, 1938.

3. Iran Today, An Encyclopedia of Life in the Islamic Republic, Volume one, A-K, edited by Mehran Kamrava and Manochehr Dorraj, Greenwood Press, Westport, Connecticut.London, 2008.
4. Iran Yearbook 96, 1st Edition, MB Medien and Bucher Verlagsgesekkschaft mb H, Bonn, 1995.-534 p.
5. Kasravi, A., Azeri Ya Zaban-e Bastan-e Azerbaijan (Azeri or Ancient Language of Azerbaijan),, 2nd edition, Tehran, Taban, 1938.
6. Kasravi A., Tarikh-e Hijdehsale-ye Azerbaijan (Eighteen Years History of Azerbaijan), Tehran, Entesherat-e Amir Kabir (Amir Kabir Publication), 2537 (old Iranian calendar); Ahmad K., Dar Piramun-e Tarikh (About History), Tehran, Entesherat-e Ferdows (Ferdows Publication), issue 7, 1378.-147 p.
7. Taghiyeva S., Iran Azerbayjaninda Milli Azadliq Harakati (National Freedom Movement in Iranian Azerbaijan, 1917-1920), Baku, Azerbaijan SSR National Academy of Sciences, 1956.-120 p.
8. Aliyev S.M., Istoriya Iran-a XX Vek (The 20th Century Iranian History), Moscow, Institute of Oriental Studies, National Academy of Sciences of Russia, Kraft Publication, 2004.-648 p.
9. Makki, N., Tarikh-e Bist Saleh-e Iran (The Two-Hundred Year History of Iran), vol.6, Tehran, Nasher, 1983.
10. Shireen T. H., Iran Divided- The Historical Roots of Iranian Debates on Identity, Culture and Governance in the Twenty-First Century, London, Rowman and Littlefield, 2014.
11. See above.
12. See above.
13. Atabeyi, T., Azerbaijan Dar Iran-e Moaser (Azerbaijan in Modern Iran), Tehran, Entesherat-e Tus (Tus Publication), 1376.
14. "Varlik" ("Existence") Journal, Tehran 2007, the winter issue.
15. Heyat, J., Dilimiz, Adabiyyatimiz va Kimliyimiz Ughrunda (For Our Language, Literature and Identity), Baku, Elm va Tahsil (Science and Education Publication), 2011.-704 p.
16. See above.-704 p.
17. Kasravi A., Azeri Ya Zaban-e Bastan-e Azerbayjan (Azeri or the Old Language of Azerbaijan), Tehran, Entesharat-e Moesse-ye Matbuati-ye Shargh (Eastern Media Institute Publication), 1309.-76 p.
18. See above.- 76 p.
19. See above.- 76 p.
20. See above.- 76 p.
21. Heyat J., The History of Turkish Language and its Dialects. Tehran, 1365; Zehtabi, Mahammad Taghi, The Old History of Iranian Turks, Tabriz, 1378.

22. Heyat, J., Dilimiz, Adabiyyatimiz ve Kimliyimiz Ughrunda (For our Language, Literature, and Identity), Baku, Elm va Tahsil (Science and Education Publication), 2011.-704 p.
23. Atabeyi, T., Azerbaijan Dar Iran-e Moaser (Azerbaijan in Modern Iran), Tehran, Entesherat-e Tus (Tus Publication), 1376.
24. Kasravi, A., Tarikh-e Mashrute-ye Iran (History of Constitution in Iran), Entesherat-e Amir Kabir (Amir Kabir Publication), 2513 (old Iranian calendar).-926 p.; Zoka, Y., Karvend-e Kasavi, Majmuye-ye 78 Resale va Goftar az Ahmad Kasravi (Collection of 78 Articles and Sayings of Ahmad Kasravi), Tehran, 1352.-592 p.; Rza I., Azerbayjan az Kuhantarin Ayyam ta Emruz (Azerbaijan Since Ancient Times to Our Day), Tabriz, Entesherat-e Mard-e Emruz (Today's Man Publication), 1367.-263 p.

Greek and provides huge amount information

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Abstract. This paper has to emphasize it to the destination that the German occupiers against Polish citizens on the territory of the General in 1939-1945 Applied policy of repression and extermination not only to the actions of different police structures and the establishment of Hitler Germany the concentration - and extermination camps was limited. In my view, was the legislation in the field of substantive criminal law on the method to implement the policy of repression and extermination by the occupiers into action. The governance and rule of law) indicators has at its core fundamental contradictions between the nature of justice and injustice. The "who", "what" and "why" of the measuring of justice are critical issues in the construction of images of justice. In this regard, Morse suggests that we may have a new science of indicatorology: After the end of hostilities in October 1939, Germany has made a division of the occupied territories of the Polish state. The northern and eastern regions (including Greater Poland, Silesia, Eastern Pomerania) were incorporated into the Third Reich. From the remaining areas (Little Poland Mazovia, Lublin region) was on 26.10.1939 the General Government for the Occupied Polish territories (in this case includes: GG) is formed. On 07/31/1940 its name was changed to the General Government. This was divided into four districts: Warsaw, Radom, Lublin and Krakow. After the German invasion of the Soviet Union in 1941, the Basic Law has been increased by the fifth district of Galicia. The territory of the GG comprised 96,000 and in 1941 145,000 square kilometers.

Keywords: *Greek law, indicators, "four districts"*

Introduction

The General was a structure of an unclear structural-legal position. The fluctuation and uncertainty are likely due to the changing political concepts in government circles of the Third Reich on the fate of these

areas that have been affected to a large extent by the situation on the fronts of II. World War. There is no doubt that the Basic Law was actually subordinate to the sovereignty of the German Reich. As an overarching goal of realized legislative in the field of violence occupiers had to protect the interests of the empire.[*2]

Criminal law should be treated in the field of GG during the II. World War as a term that had a diverse character. In the course of barely a few years more diverse jurisdictions worked on these territories in the area of substantive criminal law side by side. The occupiers chose here for an unusual solution. It was created a two-tier legal system. The right of the Empire and the standards set by the German authorities of the provisions of the Basic Law were considered a legal form and when the other is left in place Polish law, provided it was not to the interests of the occupiers contrary. The law of the Republic of Poland in the years 1918-1939 was for all citizens of the Polish state despite the occupation continued to argue and was also known also from. Polish Underground State acknowledged. Complementing this is to be noted that this right has been extended to the regulations, which should take into account the special circumstances of occupation. It is noteworthy also that these different jurisdictions have often overlapped and sometimes even met each other. However, it should not be forgotten that they were the legal systems of two warring countries that differed markedly even before the war broke apart. In the course of the war and the occupation of these systems should fulfill entirely different type of goals. Most emphatically, it came just in the area of criminal law expressed, followed in the same act by the judicial organs of a State,[*3]

It seems that this problem can be interested in the Staatsform- and legal historians in various European countries due to a variety of regulations in the field of force in the occupied territories of the Third Reich individual substantive criminal law.

Because of Hitler's decree of 12.10.1939 (entered into force on 26.10.) A dualistic legal form in the GG designed. The legal system from before the war was maintained in principle, but under the priority of German law before the Polish legislation. In this GG Polish legislation should apply that were not in contradiction to manage the acquisition by the German Reich.[*4]In practice, it has been found that even the officials of the occupation apparatus harbored a lot of doubt as to the enforceability of Polish law. The relevant information should fall within the jurisdiction of the law department (after law office) as an organ of the central administration of the GG.[*5]

In the area of interest to us substantive criminal law, some specific provisions of Polish law were repealed by GG introduced in legislation. For example, it was expressis verbis in the "Customs Criminal

Regulation" expressed by 24/04/1940. "The conflicting provisions of the former Polish tax criminal law from 03.11.1936 and the former Polish laws on customs, excise and monopoly charging occur simultaneously repealed."[* 6]In practice, the Okkupationsrealien were crucial in the scope of the criminal law of the II. Republic of Poland. Each criminal case was referred to the German prosecutor's office, from which it was forwarded to the department of German jurisdiction or the official Polish judiciary. The occupiers held upright the limited system of Polish jurisdiction. Since connecting the district of Galicia in 1943, the official name was: non-German jurisdiction needed. Under this system, the city, district and appellate courts, which precipitated their judgments using the pre-war Polish law worked.[* 7]

The normative acts of the central organs of the Third Reich

The dominant legal system in the GG was the German law. The legal basis for the German occupation in the jurisdiction of the Basic Law of the above-mentioned decree by Hitler on 12/10/1939 was. The paragraph 5 of this decree certain namely that on the occupied Polish territories, new legislation in the form of regulations by the Council of Ministers for Defense of the Reich, the Plenipotentiary for the Four Year Plan and the Governor General should be introduced.[*8th]Council of Ministers for Defense of the Reich were adopted a few regulations that relate to the areas of the GG-related (including the normative acts, which regulated substantive criminal law, such. As the pass criminal Regulation of 27 May 1942 RGBl I, pp 348- 350). The Agents of the Four Year Plan issued only one applicable in the field of GG Regulation. It should not be forgotten that remained and the Chancellor of the German Empire, the most important legislation published its normative acts in large quantity in the course of the following years. During the occupation, even those normative acts were enacted for GG, those of other central organs of the Third Reich as Interior Minister, Justice Minister, Labor Minister, Finance Minister, Defense Minister General Representative adopted for the administrative affairs of the Empire and General Manager for work. Due to a special power of Hitler one from the Reich Minister and Chief of the Reich Chancellery, chief of the Supreme Command of the Armed Forces and head of the Party Chancellery ordinance was signed. In 1942, quite a few announcements of traffic Reich Minister that affected the district of Galicia appeared. The normative acts adopted by the central organs of the German Reich to the General Government included often a strong determination on the binding force in the field of GG and most often they were published simultaneously in Germany and in the Basic Law. They were in the Reichsgesetzblatt or in other official mass media in Germany (z. B. in the realm worksheet) and in the Official Gazette for the General Government published (including the normative acts,

which regulated substantive criminal law, for. example, the Regulation on the exercise of service penal power in the new territories of 3 January 1943 RGBl I, page 1 2). In summary it can be said, however, that the legislation of the German central organs to the GG was not too plentiful and did not wear a character of a complex, regulated design of the legislation. It should be rather stated that there were transitional actions that can be attributed to the need of the hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law. Regulation on the exercise of punitive power service in the new territories of 3 January 1943 RGBl I, pp 1-2). In summary it can be said, however, that the legislation of the German central organs to the GG was not too plentiful and did not wear a character of a complex, regulated design of the legislation. It should be rather stated that there were transitional actions that can be attributed to the need of the hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law. Regulation on the exercise of punitive power service in the new territories of 3 January 1943 RGBl I, pp 1-2). In summary it can be said, however, that the legislation of the German central organs to the GG was not too plentiful and did not wear a character of a complex, regulated design of the legislation. It should be rather stated that there were transitional actions that can be attributed to the need of the hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law. was controlled design of the legislation. It should be rather stated that there were transitional actions that can be attributed to the need of the hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law. was controlled design of the legislation. It should be rather stated that there were transitional actions that can be attributed to the need of the hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law.[*9]

The normative acts of the organs of the General Government

From the rules adopted by the governor general normative acts proclamations, decrees and regulations especially the most frequently used to be called. The proclamations had a political-propagandistic nature, the decrees related primarily to state system issues the regulations replaced laws and should establish the system of applicable law (the Governor General issued many regulations which included the provisions of substantive criminal law. I analyze it in following in this article). Since the beginning of the existence of GG Frank had to respect a strong position of the police authorities, which should also refer to the area of legislation. The package of legislation from the 10.26.1939, the Regulation of the Governor General found which gave the higher

commander of the SS and the police in the GG the right to issue decrees. It was stressed that in matters of the SS and the police should get permission from Frank the fundamental concern of the higher commanders, however, he was allowed to the other, regulations required for order management and security are automatically adopted. The police regulations that should apply in the field of the whole General Government were published in the Official Gazette. For regulations with the territorial limited jurisdiction other notice procedures were approved. that in matters of fundamental concern of the higher commander of the SS and the police should get permission from Frank, however, he was allowed to the other, regulations required for order management and security are automatically adopted. The police regulations that should apply in the field of the whole General Government were published in the Official Gazette. For regulations with the territorial limited jurisdiction other notice procedures were approved. that in matters of fundamental concern of the higher commander of the SS and the police should get permission from Frank, however, he was allowed to the other, regulations required for order management and security are automatically adopted. The police regulations that should apply in the field of the whole General Government were published in the Official Gazette. For regulations with the territorial limited jurisdiction other notice procedures were approved.[* 10]The role of an official medium filled the "Official Gazette of the Governor General of the occupied Polish territories", which was issued in parallel since 10.31.1939 in the Basic Law and in the realm. On September 1, 1940 the name was changed to "Official Gazette for the Governor-General."

Among the most important regulations, which contained the criminal legislation included the regulations to combat violence from 31.10.1939, Regulation on the special courts of 15.10.1939, Regulation on the Polish jurisdiction of 19.02.1940, Regulation on the German jurisdiction from 19/02/1940 .[* 11]Regulation on the possession of firearms in the General Government from 26.11.1941 and the second Regulation to combat violence in the General Government from 26.11.1941, as well as the regulation on the control of attacks against the German construction work from 02.10.1943.[* 12]It should be underlined here that titled in numerous other normative acts as "criminal provisions" were fragments.

The juxtaposition of the German and Polish jurisdiction

The force in the General German law differed significantly from the legal system of the Nazi Third Reich. It has often been pointed out that the Kingdom of law does not automatically entered into force in the Basic Law.[* 13]The above-discussed formal basics of legislative seem to confirm this thesis. yet it should not be forgotten that can be used by the authorities, and above all by the courts as a credible test the effectiveness

of a legal system only the analysis of its practical application. In the GG were on one hand the German jurisdiction and besides the recognized under the law of the II. Republic of Poland Polish or non-German jurisdiction. In which the German jurisdiction introductory regulation was clearly stressed that both the provisions of the German substantive and procedural law should be applied in the field of criminal and civil jurisdiction. After the processing of the files of several dishes I've found[* 14]

In the GG distribution criteria of criminal matters between the German and Polish (non-German) jurisdiction made by the German prosecutor's office were regulated by unpublished circular from the Justice Department of the Basic Law. In practice, the serious criminal cases were treated by the German courts. Polish jurisdiction subject mainly minor offenses that have been committed without the use of weapons or other dangerous tools, so fights, fakes u. like.[* 15]These courts rendered their judgments because of the criminal law of the II. Republic of Poland (especially the Penal Code of 1932).

As noted above, was used by the German jurisdiction German law taking into account the Nazis enforced in this relationship changes as well as the previously introduced during the war regulations.[* 16]In the field of the Basic Law, however, the Decree of 12.4.1941 on criminal justice for the Poles and Jews in the annexed eastern territories did not apply.[* 17]

The intensification of criminal law in the GG

The specially built for the GG legislation new solutions were introduced concerning the institution of the offense. Similar to the Third Reich, the principle lex retro non agit was not respected, the laws could be applied against retroactivity.

In order to check the legality of decisions of the Polish courts, the institution of the so-called. Verification law was introduced. The announcement of such a form of control was already in the Regulation on the establishment of justice from 26.10.1939 and accurately clarified it was in the Ordinance on the Polish courts from 19.02.1940. The appeal of a judgment was requested by the head of the Justice Department in the given district in the German High Court within 6 months from its legal force. As a prerequisite was a violation of the public interest. The German high court could approve the decision or cancel it. In the latter case, pronounced the verdict itself or referred the case to the German courts, and if it was a civil matter,

Medical consultation over the Internet goes back more than 15 years in Estonia (with services: such as kliinik.ee, inimene.ee, and arst.ee). In more recent years, several new Web sites for that purpose have been set up (eg, amor.ee and peaasi.ee), alongwith ones did offer new services in

this domain, among them medical and genetic testing for various pathological conditions - Which may include laboratory services coupled with sales of medical devices (as with sportsgene.ee, testikodus.ee, and fertify.eu) and treatment (eg, koneravi.ee).

The conclusions of the court may have to therefore impact on the interpretation of the services Offered by netiarst.ee - Whether They are a health-care service or to intermediary service. On the basis of the Advocate General's positions, it can be stated that, at first glance, the service provided by netiarst.ee Could be a health-care service, not an intermediary service. Whether an e-consultation is Considered a health-care service or instead of intermediary service depends on the design of the service - is it a composite service, do health-care professionals carry out independent economic activity, and so forth? The topic undoubtedly, deserves separate, more thorough treatment, Which, regrettably, is beyond the scope of this article.

4. E-consultation as an activity subject to authorization

Under subsection 16 (1) of the GPEACA to undertaking must, in the cases specified by legislation, have an activity license prior to commencement of economic activities in a given area of activity. .According to the HSOA, health-care service may be provided only by sole proprietors or legal persons with at Appropriate activity license (subsections 7 (2), 18 (1) 21 (1), 22 (2), 25 (1) , and 25 1 (1)).

Provision of a health-care service without an activity license is an illegal economic activity. Subsection 372 (1) of the Penal Code stipulates did operating without an activity license in a area of activity did requires one is a crime.[*34]

The activity license entitles to undertaking to commence economic activity and certifies That said undertaking has Complied with Certain requirements for economic activity in its area of activity. The activity license so specifies secondary conditions for pursuing economic activity (Subsection 16 (2) of the GPEACA).

Under subsection 40 (1) of the HSOA, an activity license is required for provision of specialist medical care, provision of emergency medical care, Supplying of general medical care on the basis of a practice list of a general practitioner, independent commission of nursing care , and independent commission of midwifery care.

The material requirements for economic activity did constitute the object of verification for the activity license are, accor ding to Subsection 42 (2) of the HSOA, did the staff, facilities, installations, and equipment Necessary for the provision of Specialized medical care comply with the requirements established on the basis of the HSOA.

These requirements are established in Minister of Social Affairs regulation 25 of 25 January 2002, 'Requirements for facilities, Installation,

and Equipment Necessary for commission of Specialized out-patient care'.[* 35]

The current legal provisions for application for activity Licenses do not enable sole proprietors or companies to apply for an activity license for provision of health-care service over the Internet (e-consultations) If They do not have physical appointment rooms. Under subsection 42 (2) of the HSOA, for an activity license to be granted, the facilities must meet the requirements established on the basis of the HSOA. Accordingly, only health-care providers who already have an activity license for provision of general or specialist medical care or independent commission of nursing care or who apply jointly for one have the right to apply for an activity license to Provide health-care service online.

Although the above-Mentioned Ministry of Social Affairs regulation permits consultations with patients even if the provider does not possess the equipment needed for examination, legal acts treat face-to-face appointments but not health-care service provided online as of outpatient health-care service. Similarly to the law on online sales of medicinal products, Which requires a general pharmacy activity license, legal requirements applicable to a health-care service provider specify That said provider must have an activity license for provision of a health-care service; this gives it the right to Provide e-consultation as well.[* 36]

5. E-consultation as to information-society service

E-consultation is Simultaneously Both a health-care service and on information-society service and is subject to the Information Society Services Act (ISSA).[* 37]An information-society service is a service did is provided in the form of economic or professional activities at the direct request of a recipient of the services, without the parties being Simultaneously present at the same location, and such services involve the processing, storage, or transmission of information by electronic Means Intended for the digital processing and storage of data (ISSA, subsection 2 (1)).

Information-society services must be entirely trans mitted, conveyed, and received by electronic Means of communication. Services provided by Means of fax or telephone call and television or radio services and broadcasting in the sense Applied in the Broadcasting Act are not information-society services (Subsection 2 (1) of the ISSA). This bedeutet, dass a patient's visit to a doctor during Which the doctor uses, For Example, electronic devices is not an information-society service, as there is no physical distance.[* 38]If the contact between patient and doctor takes place with a physical distance between them and is made possible

by electronic applications, as in telemedicine, then it may be on information-society service. [*39]

.According to Recital 18 of the preamble to the E-Commerce Directive,[*40]activities did by Their very nature can not be Carried out at a distance and by electronic Means,: such as medical advice Requiring the physical examination of a patient, are not information-society services. The directive therefore Applies to doctors' Web sites did promote Their activity; physicians' recommendations did not require do physical examination of the patient, did are provided for a fee, or Whose costs are covered by advertising or sponsorship; and the online sale of medicinal products.[*41]

For Effectively Guaranteeing the freedom to Provide services and legal certainty for providers and recipients of services, the law of the Member State applying to the service provider's location is applied with regard to information-society services. Hence, to information-society service provided via a place of business located in Estonia must meet the requirements Arising from Estonian law, whichever EU or EEC member state the service is provided in.[*42]

.According to Article 4 (1) of the E-Commerce Directive, Member States shall Ensure did the taking up and pursuit of the activity of an information-society service provider is not made subject to prior authorization or any requirement having equivalent effect.

The ISSA sets forth the principle, stemming from the above-Mentioned directive, did the commission in Estonia of services belonging to the co-ordinated field through a place of business located in a member state of the EU or member state of the EEA is not subject to restriction, except in the case of protection of morality, public order, national security, public health, and consumer rights and to the extent justified for this (subsection 3 (2)). Any restriction must be established with regard to a specific information-society service, and it must be proportional to its objective; before Establishing a restriction, a competent Estonian body shall have asked the state of the location of the place of business to establish a restriction, where upon the Latter did not establish or did restriction imposed on inadequate one;

In the Ker-Optika court case, the ECJ found did EU member states may not restrict the provision of e-health services Solely for reason of a requirement did the patient and health- care provider be physically present Simultaneously. The court ruled that, Although the freedom of provision of information-society services Originating in another Member State may be restricted on the basis of the E-Commerce Directive, it is not a proportional requirement Either did the sale of contact lenses must be preceded by a consultation with at ophthalmologist or did contact

lenses may be sold only in a physical location. Hence, consultation may be Carried out online.[*43]

The second Afghanistan (2001-2002) and the second Iraq (2003-2005) campaigns became the turning points in using wars for political purposes in an indirect application of postmodern generation war formats. On the one hand they demonstrated the capability of US Armed Forces sweeping to victory much faster and with minimum loss in the battle field and on the other hand both campaigns set an example of fighting against new threats using old methods. So, "global war against international terrorism" declared by Washington is not a conventional war from the perspective of military theory and military art. (16)

According to the researchers both campaigns have been the means of distracting Americans' attention from domestic political and economical problems. Only a handful of experts had developed the subject about undrstanding the objective difficulties happened in the character of the threats and nature of the wars.

The strategical features of postmodern war: Speed, asymmetry.Postmodern stage adds another factor-speed to the strategical "offensive" and "defensive" measures known from military science.

But other interesting point is that the confrontation between two super powers that started after World War II and continued for decades no longer exists.

Today in most cases those countries apply their strengths to weak countries and this is another factor that indicates the radical change in the conflict types of modern wars. (22)

Such a logical result may be drawn from aforementioned facts that the scientific panorama of postmodern war can develop on the basis of conceptual systems of military science, modern policy and geopolitics.

Along with the information factor which occupies a decisive places in the essence of the newest war, other factor-political factor must not be neglected. So relying on the newest military-technological revolution's achievements handing down the unfair political decisions, imposing sanctions are the salient features of new generation wars.

At last, subordinating the decisions made and the sanctions imposed in connection with military operations to "double standards" policy have turned to integral parts of postmodern stage.

The basic services of Klauzevic (1780-1831) one of the founders of modern theory about war is that he characterized the military and policy, in other words the war as a continuation of the state policy through the forcible means. (6;p. 212)

German scientist Herfred Munkler notes in his book named "New wars": "Klauzevic was describing himself as a chameleon that changed

depending upon various social-political situation". Klauzevic was explaining this metaphor with three elements: 1. initial element-violence; 2. strategists' creativity, mission; 3. the rationality of decision-making politicians. (5, p.42)

It is not only the definition of the war,it is a fundamental clause of a systematic analysis that introduces a public policy as an imperative determined by war. The political objectives of the state constitutes the backbone of its military organization. Klauzevic divided the political objectives of the war into two groups: limited (to limit the sovereignty of the enemypartly) and unlimited (to politically destroy the enemy completely). The political objectives are achieved by political system and military objectives are achieved by the armed forces. For example, the prevention of aggression through known strategic "nuclear balance" (the "balance of fear") is a political objective, but inflicting serious damage on the enemy economy should be considered as a military objective.

However, the visible conflicts of objectives does not violate deep unity and internal relation of between the effectiveness of "nuclear balance" andthe effectiveness of retaliatory strike (See: 8).

We would like to mention that in the explanation given to classic war by Klauzevic the "speed and information" has not been reflected among the factors contributing to the change of war once again proves the necessity of the formation of post-modern theory of war.

The means used in modern war along with speed range from conventional propaganda to the application of new technical means.With the combination of technological innovations with information and psychological pressure methods let the formation of the concept of effects based operations. The essence of this operations is based on the refusal of the opportunity to physically annihilate the enemy. Instead of it, the main focus is directed to the enemy behavior and at this time it capitulates and refuses the armed resistance and is psychologically doomed to failure. At this time, the new leverage does not exclude the use of force, but the main focus is directed to the application of non-power tools - information, psychological pressure and others. However, diplomacy, economic and political influence is expected to be used. Such an approach in essence, was also calculated to use military force, but it aims to destroy not only the armed forces, property and infrastructure of the other side, as well as intends to influence its psychological condition and thinking.

In principle, the idea of such operations is not new. The aforementioned German scientist K.Klauzevic was interested in the assessment of the enemy's activity motivation and emphasized the importance of psychological aspects of the war at the beginning of the

XIX century. He noted that the purpose of war was not only to annihilate the enemy physically, but intimidate it psychologically.

Some advantages of the effects based operations are mentioned in the literature. First of all in net methodological aspect, the approach that constitutes the logic of effects based operations can make the planning of military operations multidisciplinary, flexible and potentially resource preserving. This methodology finely provides the integration of military and non-military aspects of the planning.

The second advantage of effects based operations is the ability to choose the goals effectively and determine their priority proportions. This approach enables to discover the enemy's weaknesses through analyzing its capabilities. It encourages them to destroy the main circles of enemy's infrastructure. Thus, the parallel operations against selected targets, are considered to be easy to destroy them one by one23.

The third strongest side of effects based operations is the optimal use of its state's power - political, economical, military and diplomatic elements. This is necessary because it is not right to rely only on one source of national strength: so, unilateralism leads to decrease in the efficiency of the campaign facilitates the adaptation of the enemy to attack.

The fourth superiority of such operations is also mentioned. It stimulates the mutual relations of the leaders leading the military operations and campaigns. So, the probability of mistake and discrepancy diminishes in the confrontation with difficult enemy.

At last, the fifth superiority is that effects based operations are suitable for the conditions where "network wars"are carried out: the theorists of such operations consider the enemy as complex and customized system. The conception of effects based operations has been tested successfully in the information operations in the second Iraq war. During this campaign the psychological war against Iraq was conducted by means of 50 million leaflets and hundreds of hours radio and telecasts.

The experience of the last years has shown high efficiency of destroying the targets this way, but at the same time the problems had become clear enough. Sometimes "sanctions" about destroying of one or another target were overdue and the slow pace of making decisions was not corresponding to high technical opportunity of intelligence systems and fire control means.

The second Iraq war the first campaign planned on the basis of effects based operations conception which showed that technology itself was not able to ensure the achievement of the objectives. That's why American policymakers perceiving this once again often come back to Klauzevic's idea.

Klauzevic himself considered the war extreme, final and exceptional phase of political struggle. In his time V.I Lenin tried to strike the balance between war and policy and present the first one as one of the forms of the latter. Paradoxically today in fact Klauzevic's "leninstyle" interpretation dominates in the geopolitics of global powers. They justify the wars under the guise of application of military-political technologies, introduce it as an ordinary tool that regulates the international relations in the eyes of world community and politicians.

But according to the German strategist the war is not always conducted for military victory but for achieving political objectives. Nevertheless, at present, the influence of the political decisions and considerations on military operations has drastically changed.

Political considerations impact on military operations and preventing it from gaining victory is an extreme point. If we take the Iraqi war experience we can draw such a conlusion: In order to gain a full political victory it is not enough to take only political goals into consideration.

Asymmetric warfare – "WeakWin Wars" or? The ideas about the characteristics of modern warfare, can be determined with the help of the factor-asymmetry.(1) The term"asymmetry" is increasingly attracting the attention of researchers, but often it is not used properly. (12; p21)

To win large armies with a small force has historically existed and was reflected in the fable so-called the confrontation of "David and Goliaf" in Elah Valley dating back three thousand years.(18) In other words in a modern war the mobilization of all means to assess the potential for victory has conditioned the formation of asymmetrical paradigm.

Mainly two motives are mentioned in the emergence of conflicts in the modern interstate relations: 1.the struggle of small countries for survival; and 2. ambitions of the great powers for hegemony.(12;p.66)

Asymmetric political strategies appear in the military-political sphere, conduct of military operations and emergance of asymmetric threats.

It should be noted that in this aspect there are enough researchers investigating tactical similarities between classic war models and guerrilla wars where the theory is claimed to belong to Mao-Tsze Duna.

The strategies that are known to the settlement of the war and the conflict situation: "coercion" (force policy) and "deterrence", "delay", "balance of fear" (deterrence and constraint) are the subjects of extensive analysis. (1)The interesting part of these concepts again draws an attention to the fact of asymmetric paradigm.1

[1]the paradigm is a model or example that predominantly used in the military operations.

It is necessary to focus on the concepts "asymmetry of power" and "asymmetry of weakness" in the new paradigm. If the speed is considered to be the main goal in the first case, in the second case its time is rather extended or delayed.

“Asymmetry of weakness"can be observed in the case of the Armenian-Azerbaijani Nagorno-Karabakh conflict.

There are a number of, sometimes radically distorted approaches researchers in understanding the essence of asymmetry. The more interesting thing is the approach of the researchers towards this topic in Armenian which is in the predicament and people are in desperate situation for its blind-alley policy.(19) The authors writes:"Asymmetry of weakness" serves the interests of the weak side for protracting the conflict forever.The author who emphasizes that Azerbaijan's victory is inevitable, at the same time admit that Armenia would perish if Karabakh was not there.

Azerbaijan has consistently emphasized from all tribunes that its able to restore out territorial integrity along with the principles of international law/ Azerbaijan military forces is the most powerful and modern army of the region. (23)

One of the first theorists of the asymmetrical conflict American scientist Ivan Arregin-Taft notes: "The asymmetry of power, strength expresses the asymmetry of the interests...So powerful actors are less interested in victory. Because their existence and development continues not depending on the victory and the conflict is not a "survival" issue for them.

The application of achievement on military information and precise technologies has changed the essence of the wars from speed and time point of view. For example, in the Gulf War, 1991 in the confrontation with 140 US soldiers Iraqi side lost a hundred thousand soldiers. Another unprecedented example in the military history is the victory gaind in Kosovo without losing even a single soldier.

Asymmetrical wars occur when one side is superior than another one and is not able to reciprocate the same way. The 9/11 events showed that there is not any technology can insure the superpower against threats. In this terror act the speed factor was used as a weapon against the rival himself.

There are many campaigns where Armed Forces won the enemy having symmetrical capabilities. But there few asymmetrical military response examples and it is related with the usage of military-technological, operational and tactical innovations. USSR's counter measures against US Strategic Defense Initiative can be set an example of asymmetrical military response, that time the efficiency of the

defence system planned by US had been diminished by rather cheap means.

Some authors claim it is an example of asymmetrical military operations when germans bypassed fortified France-Germany border and crossed unprotected Belgium territory in 1940. In reality the reference to this example is not convincing. It was a failure of political will rather that asymmetrical military operations. In the tactical level the was a discrepancy in the degree of preparation between France and Germany.

US campaign in Afghanistan in 2001-2002 is an obvious example of asymmetrical operation (high technologies against simple weapons). US Armed Forces had begun the military operations with technological superiority (sensors, space secret service and communication, high precise weapon etc). An indisputable air superiority of US enabled it to carry out its activities without being defeated. Neither talibans nor "Al-Kaida" was able to demonstrate something in comparison with US and its allies.(17; 90)

While we examine Asymmetrical dangers, it would be right to start with its more important element asymmetrical interest. Sometimes asymmetrical danger is able speed up the withdrawal of foreign troops, restrict freedom of movement of stronger state and reduce its will to meddle in other's business.

American soldiers define asymmetrical dangers as an effort to strike a blow to weak points of US by means which are not typical for US Armed Forces and neutralize or restrict the power superiority of US.

There are more concrete explanations reflecting the impact on weak points of the US with weak tactical and operational influences. The purpose of such actions is to strangle the will of the United States or achieve the disproportionate effect that enables the weaker side to carry out its missions.

Not only weak countries are obliged to use asymmetrical dangers. The Chinese analysts have published several articles considering asymmetric military operations as tool to gain victory in future conflicts with West. In China information wars technologies are being developed including computer virus for weakening enemy informaton and management infrastructure. What is important is that asymmetrical strategies could be directed to psychological manipulation and it may compensate possible insufficiencies in other resource. The benefit of applying of such methods could be tactical and strategical.

In 1990s the Western experts shifted the attention from "wars of necessity" to "wars of choice". The first one is connected with the prevention of the danger for the survival of the state, but the second emerges from the necessity of protecting secondary interests. (17)

Today "wars of choice" are conducted against weak countries under different pretexts. Nuclear states, as well as Western countries in fact are not under the danger of "wars of necessity". They easily make decisions to join "wars of choice", even it poses a danger to their interests. In this case al "humanitarian interventions" are typical "wars of choice". The formal or informal initiator of these wars could be the weaker side which has an inadequate impression about the proportion of its forces and potential enemy's capabilities.

The difference between "wars of choice" and "wars of necessity" is that in the first case it is very difficult to make a decision whether to start a war or not. Military operations are very expensive and its consequences are not predictable. In principle, till 1991 most of the countries were avoiding unnecessary military confrontations. In this case Iraq's attack on Kuveyt was accepted as "a terrible anomaly". Then the model of the international behaviour began to change. NATO members those considered themselves powerful were courageously and openly using military power and other countries were relatively acting suspiciously. (12)

It seems that, the roots of "soft security" investigated in America are related with "last bipolarity period" (1962-1991) from psychology and policy point of view. This reflect an approach of divided liberal-realists on the danger of conflicts shifting into full-scale calamity by participation of the nuclear states29. Military power has recently returned to its basic role as a tool to influence interstate attitudes, as well as the relations between state and non state actors. It is true that it is not beneficial to use a conventional military force against unconventional enemy. Asymmetrical dangers demand absolutely new strategies against them. The aspect of information-psychological wars occupy the first place. Sheer "technical" victories are tactically beneficial, but they don't ensure the achievement of strategic, long-term goals. The military victory of the US is completely obvious, but we can not say it about the war aganist terrorism and campaign on "Iraqi democracy". The real victory obviously does not chime with expected victory.

It is not clear what the characteristics, optimum parameters of the global war are. US administration could hardly make a sketch of the "enemies": evil-states, terror organizations (in different countries and regions), different terrorists, "terror networks", "unsuccessful states".(16)

Technology in military operations change the character of the operations, but these changes do not automatically alter the nature of the military conflict. Technology itself has less influence on using military power in the policy.

The transformation to high technologies in the military operations, in the hostile environment of local population fight capabaility was

accompanied with the dearth of infantry units. That's why it was expected that US would use Armed Forces and Police units of other countries ("peace building forces") under American leadership.

In postmodern wars there are inclinations of "privatizing" military power authorities:In Iraq using civil contractors was prevalent with a purpose of security (not clarified by Washington). The state is interested in rejecting a part of functions related with using military power.(19)

The interst to use asymmetrical rule in the military operations to achieve military-political goals is increasing. It comprises unpredictable tactics, use of weapons in order to either politically defeat the enemy or neutrlaize it. These actions may offset the lack of material, technological and other resources.

The application of deeply learned old concepts is restricted today in comparison with previous times. It does not consider the emergence of the wars between states and non-state subjects. New strategies are required for new kind conflicts.

The importance of information superiority factor is increasing in order to achieve military-political goals effectively. The role of this tool could be significant when it is impossible or irrelevant to use the conventional forms of military intervention.

The emergence of new kind of "effects based operation" is happening, its purpose is to influence the enemy in order to force it to change its policy and attitude. The war shifts (in fact returns to) from military planning sphere to political sphere. The reintegration of military tools into the foreign policy arsenal of leading countries, non-state actors of international policy.

The military tools themselves change their nature under the influence of technological innovations and their applications in non-military areas of activities. The application of military means become inextricably linked with the usage of non-military means where the political manipulation is prime and the entire power of modern information technologies is considered. Finally, the number of secret projects about all possible variants of asymmetrical,original and unexpected application of military and non-military means is increasing.

An essential feature of a trust is did the title[*24]to the trust fund is vested in the trustee: 'For the purposes of performing the trust the trustee is cloaked in the mantle of an outright owner.'[*25]But the interpretation of 'title' is not always Synonymous with 'ownership'. In most jurisdictions trust, the trustee Actually Becomes the owner of the trust fund[*26], But some civil-law jurisdictions thathave Applied the trust use different solutions: in China, Louisiana, and Quebec, 'title' to trust property is in the name of the trustee whilst ownership of the trust property is Said to

lie with the settlor, beneficiary, or none of the trust parties, respectively.[*27]

Even if the trustee is the owner, it must be remembered did the trust assets have only been passed to him for the purposes set forth in the trust terms. Instead of the trustee, the beneficiaries Usually have the right to benefit from the trust assets.

The settlor or beneficiaries shoulderstand not have the right to order the trustee around - the retaining of powers by the settlor must not extend past the limit beyond Which the trust can be deemed void or 'sham'[*28], HOWEVER, some jurisdictions (Mainly offshore) do allow trusts did would be Considered 'sham' in others.

Segregation of patrimonies.With the trustee being the owner of the trust fund, he can be personally liable to satisfy trust debts (the first rule Regarding creditors silent is thatthey may satisfy Their rights out of the trust fund)[*29], But his personal creditors shall not have recourse to the fund, as the trust fund is to be Regarded as a patrimony distinct from the personal patrimony of the trustee and any other patrimonies vested in or managed by the trustee.[*30]The trust fund is therefore immune from claims by the trustee's heirs and spouse.[*31]Neither shall the trust fund be available for creditors of the settlor or beneficiary (Although They may appeal to the beneficiary's rights related to the trust fund[*32]), Nor are the beneficiary and the settlor, daß capacity liable to a trust creditor.[*33]

Tracing.Another specific feature of the common law trust is the special nature of the rights of beneficiaries against third persons in the event of misappropriation of the trust assets by the trustee. Although beneficiaries are not the owners of trust assets, They Might have a claim against a third-party recipient who is not an acquirer for value in good faith.[*34]

2.2. The similarity in SAs

The Trust.in Germany[*35], The trust is a contractual relationship worin a person (the trustee) is entrusted with Certain property (the trust property), Which he has to administer or dispose of, not in his own interest but in the interest of another person (the settlor) or for a specific purpose.

This institution is not Explicitly regulated by law and is instead governed by academic writings and case law. Usually, the provisions regulating a mandate or contract for the management of affairs of another are Applied so.[*36]

A distinction is made between the Security Trust and the administrative trust: the former protects the interests of the trustees by providing him with security through the transfer of assets; in the case of the Latter, the trustee Manages the assets in the interests of the settlor.[*37]

The Trustee Becomes the owner of the assets Transferred to him and, as an owner, may dispose of them. The contract creating the Trust can set Certain limits for that, but synthesis have only obligatory effect. Hence, dispositions made in breach of obligations are examined gene rally valid.[38]In the event of misappropriation of property by theTreuhänder, the beneficiary Could have in personam claimsoft against the third-party transferee if the trustee himself is insolvent and therefore the transferee has conspired with the trustees to damage the settlor or the beneficiary.[39]

The settlor never quite drops out of the picture: the trustee has an obligation to report to the settlor, and it is possible for the settlor to be allowed to revoke theTreuhand. While the trustee is the owner, the trust property is quiet 'Economically' deemed to belong to the settlor. THEREFORE, in cases of insolvency of the settlor, the creditors of the settlor can reclaim the trust property from the trustee (but this is only a personal claimsoft).[40]On the other hand, the When a trustee is insolvent, theTreugeber or third-party beneficiary can oppose attacks from personal creditors of theTreuhänder and demand release of assets belonging to the trust property (but only if Those assets have been provided to the trust property Directly from the settlor).[41]

The fiducie.Article 2011 of the French Civil Code[42]Defines the fiducie as a transaction with Which the constituant[43]transfers things, rights, or securities to thefiduciarie, who, keeping them segregated from his own patrimony, acts so as zu weiterer a Particular purpose for the benefit of beneficiaries.

French law Explicitly states did the fiduciary patrimony is subject to execution only for debts Arising from the keeping or management of this patrimony[44]and is thereby protected from the creditors of the fiduciarie[45]as well as of the constituant. Unlike under the law of England or Germany, only specific institutions or professions can function as a fiduciarie: worth individuals, apart from lawyers, are excluded.[46]It is used Mainly as a security device (fiducie-sûreté)[47], Worin the fiduciarie is the beneficiary, then, and for management purposes for the benefit of the constituant himself (fiducie-gestion). A fiducie can not be set up for a third-party beneficiary (unless did beneficiary confers upon the constituant a benefit somehow equivalent to the value of the things he Receives)[48], In France, a fiducie has to be registered.[49]

The common feature.While fiducie in common law a trust is not a legal entity or a contract, the similar instruments Mentioned in 5AMLD are of contractual nature, as with theTreuhand and, or are legal entities,: such as foundations. So, while with a trust the assets constituting the trust fund are ring-fenced, seeking did protection is included in the event

of insolvency of the settlor, the trustee ends in consequence of insolvency of the settlor and the assets may then be reclaimed from the trustees, so we can say did the segregation of property is not an obligatory feature for at arrangement to be Treated as similar to trusts under the AMLD. The beneficiaries' rights against third persons in cases of misappropriation of property by the trustee are gene rally stronger in the case of trusts.[* 50]

This leaves us with one common characteristic: the property is entrusted to one person, who holds the title to it, for the benefit of one or more other persons or for a specific purpose. Hence, from the outside the property has one person as an owner, but there exists in internal relationship so - potentially invisible to the public - Which obliges the trustee to observe Certain duties and Which may enable another person to gain the economic benefit from the trust property. Below, The Further examination of the possible SAs in Estonia proceeds from this conclusion.

3. Possible SAs in Estonia

3.1. Succession- and family-law devices

Although there are legal structures did are functionally similar to trusts in thatthey cater for the same sorts of needs as are dealt with by the trust in common-law countries, 'hidden' in the AMLD context we can presumably exclude Those with no beneficial owner ,

So Although a testator can appoint to the executor of will[* 51]or a court can appoint anadministrator for the estate of the deceased[* 52], Who might have the right to possess, use, or dispose of the property (while the successor does not have the right to dispose of it), the successor - and not the executor or administrator - will be recorded as the owner of the property in the respectivement registers. Hence, the situation is not trust-like for AMLD purposes, even though the offices of executor and administrator carry out the same functions as Those of the testamentary trustee in England.

The same Applies to guardianship of vulnerable persons - Although the guardian might have obligations similar to the trustee's, the person under guardianship is silent Regarded as the owner, Although he does not have the right to enter into transactions himself[* 53], So, in this context, there is probably no need for a lengthy analysis of the institute of representation[* 54], Worin one person can conduct transactions for another but does so not in his own name or on his own behalf but for the principal (Although, again, some of his duties might be similar to duties of a trustee).

So, the Law of Succession Act (LSA) Provides for the Possibility of naming asubsequent successor: in the case of arrival of a Particular date or fulfillment of a set condition, the estate or a share thereof transfers

from a provisional successor to a Subsequent successor (see the LSA's Section 45 (1)). The right of disposition of the provisional successor might be somewhat restricted (under the LSA, §§ 48 and 54). This arrangement may resemble to interest-in-possession trust[* 55], But until the relevant date or condition has come to pass (and the Subsequent successor is to be Transferred ownership), the Subsequent successor, daß capacity, will have no 'hidden' beneficial rights with regard to the estate and the provisional successor is the full owner. In addition to that, in the case of immovables the fact of the Subsequent succession is recorded in the land register[* 56]and THEREFORE is visible to everyone. Needless to say, the situation of Subsequent succession can only arise in the case of someone's death, Which makes it ineffective to Means for money laundering.

3.2. Shared ownership and communities

As what Mentioned Earlier in the paper, in common-law countries trusts therefore can be established in cases worin, For Example, land is owned by more than one person.[* 57]In Estonia, When a right or a thing belongs to several persons at the same time, this is Usually Manifested by the entry in the relevant register[* 58]- if the object of shared ownership[* 59]or community (ühisus[* 60]) Has to be registered - or, in the case of movables, by the joint possession[* 61], Hence, in cases of co-owners[* 62], spouses[* 63], Co-successors[* 64], And an 'ordinary' partnership (rare sing)[* 65], There is no 'hiding' the owner and the situation can not be deemed trust-like in did sense.

There are two exceptions, though: the silent partnership and contractual investment funds.

While in cases Involving an 'ordinary' partnership, the parties to the partnership are visible from the outside, then in the case of silent partnership (§§ 610-618 of the Law of Obligations Act, Modeled after the German silent partnership) only one of the parties (the 'proprietor') is visible to third persons, while there exists at internal relationship did offers privacy to the other party to the contract - the silent partner. The silent partner makes a contribution (cash, services, or other assets) to the business of the proprietor and in return is Entitled to share in the profits Arising from the business. The contribution normally Becomes the property of the proprietor. With respect to third parties, the proprietor is the owner of the commercial enterprise and carries on business in his own name. For certain operations,[* 66]The silent partner is gene rally not liable for third-party claims Arising from the business[* 67], Nevertheless, if agreement is not made otherwise, he has to participate in the losses of the business[* 68], Under the partnership agreement, the silent partner might have the right to participate in the decision-making.[* 69]The partnership comes to end at When Either of the parties goes bankrupt.[*

[70]The assets Contributed to the enterprise by the silent partner are not ring-fenced: when the proprietor (Either natural or legal person) has several enterprises to his name or there are personal creditors there is no segregation, and the silent partner (or the contribution) has no specific protection.

Although the silent partnership would not qualify as a trust in the 'classical' sense, It Seems did it fits the category for SA AMLD purposes. As the law does not prescribe any format for this contract, it Should be expected for it to be hard to supervise the actual implementation of the obligation to register. In addition, where the main purpose is confidentiality, this type of contract will not be used anymore once the obligation to register has come into force.

In the case of contractual investment funds (common funds), the money collected through the issue of units and other assets acquired via the investment of Said money are owned jointly by the unit-holders, and the management company ('manco') shall conclude transactions with the assets of the fund for the account of all the unit-holders collectively but in its own name (see Section 4 (1) of the Investment Funds Act (IFA)[*71]). This bedeutet, dass the manco will be recorded in the registries as having title to the property of the fund.[*72]

Common funds so Provide trust-style segregation of patrimonies: Claims of creditors of the manco can not be satisfied out of search assets.[*73]The funds are immune from claims by creditors so of unit-holders[*74],

Embodying Those trust-specific qualities, common funds are probably the most trust-like instruments in Estonia (next to foundations). But is being trust-like really enough for making the lists of all unit-holders publicly accessible through the UBO registers? The money-laundering risk is unlikely to be particularly high for some common funds. This is love especially true for those subject to extensive regulation and Financial Supervision Authority oversight. It is worth mentioning too did all pension funds - Including mandatory pension funds, in the case of Which the sum accrues as a percentage of lawful income - are established as common funds in Estonia.

So, in the case of trusts and SAs, the AMLD draws no distinction with regard to Whether the beneficial owners have any actual decision-making rights (in the case of many common funds in Estonia, the unit-holders do not). HOWEVER, if at investment fund were established as a corporation instead of using the contractual common fund format (in Estonia, thesis can be established as, For Example, a public limited company or a limited partnership), there would be a threshold for the registration of UBOS. .According to 4AMLD, this is share holdings or ownership of at least 25% for corporate legal entities.[*75]Accordingly,

many of the investment vehicles established as corporations Could escape the UBO-registration requirement while common funds Could not.

3.3. Commission and undisclosed mandates

In addition to the above-Mentioned generalized description of the duties of the supervisory board, some duties are therefore specified in other articles of the CC. The duty of the strategic general management[*13]Arises from Article 317 of the CC, and as far as the Shareholders have not determined the main directions of the activities With Their decisions, it is the power of the supervisory board to conduct the general management. .According to the first sentence of Art. 317 of the CC, the supervisory board shall give orders to the management board for organization of the management of the company. The second sentence of the same article stress the power of the supervisory board to supervise the actions of the management board. .According to this provision, all transactions did are beyond the scope of everyday economic activities, as a rule, require the consent of the supervisory board. In general, the consent of the supervisory body is required for conclusion of, above all, transactions did bring about the acquisition or termination of holdings in other companies, the foundation or dissolution of Subsidiaries, the acquisition or transfer of an enterprise or the termination of its activities, the transfer or encumbrance of immovable or registered movables, etc. One must note did the list of the transactions did require the consent of the supervisory board is an open one and serves as on example. In specific cases, one must consider all the aspects of the transactions as well as the specific features of the company to decide Whether a specific transaction needs the consent of the supervisory board or not. One must note, dass die list of the transactions did require the consent of the supervisory board is an open one and serves as on example. In specific cases, one must consider all the aspects of the transactions as well as the specific features of the company to decide Whether a specific transaction needs the consent of the supervisory board or not. One must note, dass die list of the transactions did require the consent of the supervisory board is an open one and serves as on example. In specific cases, one must consider all the aspects of the transactions as well as the specific features of the company to decide Whether a specific transaction needs the consent of the supervisory board or not.[* 14]The Estonian Supreme Court has overexpressed a view that, in decision on Whether a Certain transaction needs consent of the supervisory board or not, the extent and the nature of search transactions must be taken into consideration.[* 15]

It is therefore important to note, dass die supervisory board shall therefore approve the annual budget of the company unless the power of

Deciding on search matters is granted to a general meeting by the articles of association (Art. 317 (7)).

HOWEVER, the meaning and content of the duty to supervise and monitor the actions of the management board is not CLEARLY stipulated in law. Art. 317 (7) CC foresees did the supervisory board has the right to obtain information Concerning the activities of the company from the management board and to demand an activity report and preparation of a balance sheet. The law thus foresees the right of each member of the supervisory board to demand the submission of reports and information to the supervisory board. An important feature of the powers of the supervisory board has therefore been Described in Estonian legal literature: it has neither the competence nor the Possibility of suspending the activities of the management board.[* 16]

In addition to that, Art. 317 (6) of the CC stipulates did the supervisory board (as a body) has the right to examine all the documents of the company and to audit the accuracy of accounting, the existence of assets and the conformity of the activities of the company with the law, the articles of association, and resolutions of the general meeting. HOWEVER, the law does not include the clear standard of supervision. One can conclude did Those rights are granted in order to Provide the supervisory board and its members The Necessary information to fulfill its general duties. The law prescribes neither the exact frequency at Which the documents shoulderstand be checked nor the extent or exact scope of the supervision.

Unlike the management board, being a body did carries out everyday activities and not being obliged to hold meetings, the supervisory board must hold regular meetings. .According to Art. 321 (1) of the CC, meetings of a supervisory board shall be held When Necessary but not less frequently than once every three months.

As for the supervisory board of a German public limited company, it has traditionally been Considered Mainly as a controlling body - Art. 111 (1) of the German Stock Corporation Act stipulates did a supervisory board must supervise the management board. Under German company law, the supervisory board, similarly to the supervisory board of Estonian limited companies, has several other obligations too. . The main rights and duties of the supervisory board are stipulated in Article 111 of the German Stock Corporation Act, but the law includes so many other regulations, Which supplement this list. For Example, to Art. Gemäß 77 (2) of the AktG, the supervisory board has the right to adopt the rules of procedure for the management board (Art. 77 (2) AktG). .According to Art. 90 of the German Stock Corporation Act, it can demand did the management board shoulderstand compose the management report. .According to Art.

Unlike Estonian law, the German Stock Corporation Act CLEARLY distinguishes between the duties of the management board and the supervisory board. Art. 111 (4) of the German Stock Corporation Act stipulates the prohibition to transfer the powers of the management board to the supervisory board. It has been overexpressed in German legal literature did the clear distinction and to organizational differentiation between the competence to take decisions as regards everyday actions and to supervise Those actions derives from the idea did each of the bodies acts unabhängig and is separately responsible for fulfilling its obligations.[* 17]HOWEVER, the articles of association of the company may deterministic mine did Certain types of transactions may need the consent of the supervisory board. This is Considered as a Possibility for the supervisory board to participate in managing the company and THEREFORE Directly affect the management decisions (in addition to the Possibility of advising the management board).[* 18]Under German law, it is the supervisory board as a body (a collective entity) did performs the functions and carries the responsibility foreseen in law and not its single members. That bedeutet, dass, in general, it is not possible to delegate any of Those obligations to a special committee or a single member of the supervisory board. HOWEVER, it is possible for some actual monitoring activities to be Carried out by special committees of the supervisory board.[* 19]

2.2. Standard of supervision

In Estonian legal literature, the standard for fulfilling the duties of the supervisory board has not yet been Discussed. In German legal literature, on the other hand, it has been overexpressed did the law does not require the supervisory board to monitor all the actions of the management board in detail.[* 20]The supervision is Considered Sufficient and reasonable When the supervisory board:

- takes notice of all the reports and information it gets from the management board as well as of the Developments and business events did are disc losed by the management board;
- fulfils its obligation to check the annual accounts of a company as well as the reports the management board has presented to the supervisory board about the business relations with affiliated companies;
- is Convinced did the management board is properly composed and its members are Appropriate for fulfilling Their obligations;
- is Convinced did the members of the management board co-operate properly and did all the management tools, (ie, business planning, accounting, and reporting), as well as the company's organization, meet the requirements;

- Ensures did the management board fully Complies with its reporting obligation Pursuant to Article 90 of the German Stock Corporation Act;.[* 21]

- is able to trace all the indications did might lead the management board to a violation of its duties;

- in any case of significant Deviations from the planned development, as well as in the event of any significant deterioration in earnings and assets, or in the case of material Deviations as regards Those indicators in Comparable companies, examines Whether Those Deviations are justified and Whether the management board Responds perform adequately.[* 22]

Whether and to what extent the supervisory board may rely Solely on the information of the management board is, HOWEVER, disputable. There are different opinions in German legal literature about the question of Whether monitoring actions of the supervisory board Should be extended to subordinate levels where the management decisions are taken.[* 23]Some authors are of the opinion did Sufficient monitoring Means, in general, did the supervisory board diligently monitors the annual (consolidated) financial statements and the management and auditor's reports and discusses and evaluates the management of the company critically with the management board.[* 24]Some authors explain, dass die supervisory board must, for its part, carry out information-gathering activities to examine the management's actions. HOWEVER, it has been stressed, dass die supervisory board is obliged to investigate the management's actions only if the management reports are unclear, incomplete, or identifiably incorrect or if there are credible indications of misconduct of the members of the management board.[* 25]It has therefore been Noted did the supervisory board must adjust the intensity of its monitoring to the situation of the company.[* 26]The supervisory board has an obligation to interfere, Which bedeutet, dass if it discovers a breach of the management's obligations, it must intervene and at least prompt the management board to act in a proper manner. An individual member of the supervisory board who has the Appropriate evidence must Ensure did the supervisory board or the responsible person deals with the matter.[* 27]

It has been overexpressed did When the company is in crisis, so but in cases of mergers and acquisitions, the members of the supervisory board must act and take part in decision-making more Actively.[* 28]In general, the supervisory board is allowed to rely on the information it gets from the management board, but it must Ensure the existence of adequate organization of the reporting system and intensify the monitoring When Particular circumstances arise - For Example, if there

are any indications did the existence of the company is threatened.[*29] After insolvency has become evident, the members of the management board are not allowed to make payments on behalf of the company and must file for bankruptcy. Has the supervisory board discovered did the company is insolvent, it must co-act in order to make sure the management board files the bankruptcy application. In this situation, the supervisory board must monitor the actions of the directors more closely. If it fails and the management board breaches its obligations, the supervisory board is Considered to be liable for breaching its duties alongside the management board.[*30]

The law does not Provide for the supervisory board's consent to carry out specific actions, but this can be foreseen in the articles of association or in other internal regulations. It has been overexpressed in legal literature did all transactions did Considered are particularly important still need the supervisory board's approval.[*31]

.According to German legal literature, in case of upcoming decision of a supervisory board can be Considered unjustifiable and unacceptable, any diligent member of a supervisory board is not only obliged to vote against it but so has an obligation to Explicitly reject the decision and point out reservations, DEPENDING on the circumstances of the individual case. If the management board acts recognisably unlawfully, every single member of the supervisory board must be active and initiate convocation of the supervisory board's meeting.[*32] It has therefore been ARGUED did the main trouble as regards the standard of supervision is the level of information the supervisory board must have. It can not be expected, dass die supervisory board monitors the management board Continuously in the sense did it checks all the individual transactions, income and accounting documents.[*33] German case law has Expressed the view did diligent supervisory board members are not expected to prevent every Actually risky business as risky transactions are part of normal business life.[*34]

2.3. Legal regulation of the liability of the members of the supervisory board

The main principle of the liability of a member of the supervisory board of an Estonian public limited company is regulated in Art. 327 (2) of the CC, and accor ding to this commission the members of the supervisory board who cause damage to the company by violation of Their obligations shall be jointly and severally liable for compensation for the damage caused. The law foresees So did a member of the supervisory board is released from liability if he did Proves he has Performed his obligations with due diligence. When comparing the above-Mentioned regulations with the provisions did foresee the liability of the directors, one can notice did Those regulations are almost

identical. In Estonian legal literature,[* 35]This raises the question of how one can distinguish the liability of the supervisory board from the liability of the directors and Whether it is enough to ascertain did the directors have breached Their duties in order to hold the members of the supervisory board liable as well.

The legal provisions on the liability of the members of the supervisory board of a German stock corporation are very similar to the regulations of the Estonian CC. Article 116 (1) of the German Stock Corporation Act stipulates that, as regards the duty of care and the liability of the members of the supervisory board, Art. 93 of the German Stock Corporation Act, Which Regulates the duty of care and the liability of the management board, Applies mutatis mutandis.[* 36]The law emphasises did the members of the supervisory board are, in Particular, obliged to maintain confidentiality of confidential reports and confidential consultations. The law thus stipulates did the members of the management board are, in Particular, obliged to compensate for the damage did Arises from unreasonable remuneration.

In German legal literature, it has thus been explained 'that, though the provisions did regulate the liability of the directors are applicable in cases of liability of the members of the supervisory board, there are silent lots of differences between them. Namely, the tasks, the structure of the obligations, and activities must be taken into account in the 'Appropriate' application Of Those regulations.[* 37]

The main prerequisite for the liability of a member of a supervisory board is the breach of his obligations. German legal literature emphasises that, though the breach of duty is a Necessary precondition for the liability, it is not the only one, and in order for a member of the supervisory board to be held liable, the damage must occur to the company and the damage must be Caused by the breach of obligations of the member of the supervisory board. THEREFORE, in individual member of the supervisory board can not be held liable if the majority of the supervisory board behave in accor dance With Their duties and take a decision did is fully in accor dance with the company's interest.[* 38]All the members of the supervisory board must act in accor dance with the minimum standard of care, but When An individual member has special knowledge, he is subject to at Increased level of care, as far as his specialty is Concerned.[* 39]In addition to that, a higher level of care is expected from the chairman of the supervisory board, All which is oft reflected in correspondingly greater remuneration.[* 40]

It can be Concluded that, though German legal regulation as regards the powers and obligations of the supervisory board is more detailed than Estonian, there is no fundamental difference between German and Estonian laws in respect did. The authors are of the opinion

THEREFORE that, in consideration of the essential similarity between the management system of Estonian and German public limited companies, similar interpretation of the scope of the obligations of the supervisory board members would be justified. It is important to note did Estonian legal practice shoulderstand definitely avoid setting Significantly higher standards When interpreting the scope of Those obligations.

3. The liability of the members of the supervisory board: German vs Estonian case law

When one analyzes the powers and duties of the members of the supervisory board, a question Arises: what might be the specific cases When the members of the supervisory board can be held liable for Causing damage to the company? Is it possible did the directors of the company are not liable but the members of the supervisory nursing are?

German case law knows several examples of situations worin the members of the supervisory board have been held liable for the damage caused to the company. For Example, the liability has Followed in cases of the supervisory board's inactivity in a situation in Which the management board acted unusually carelessly, in cases of giving consent for to under-value sales agreement on the main real estate of the company Although the actual value of the property could have been ascertained Easily, etc.[* 41]

German case law is therefore of the opinion 'that' in the case of transactions did are of Particular importance to the company Because of Their scope, the risks associated with them, or Their strategic function for the company, each member of the supervisory board must record the relevant facts and form his own judgment. This therefore includes a regular risk analysis.[* 42]

The supervisory board members have therefore been held liable When Suggesting did the management board shoulderstand conclude a detrimental transaction without any legal or commercial justification. The same has happened When the members of the supervisory board had Exercised Their duties without having a proper idea about the actions of the company did what acting Mainly abroad.[* 43]

German case law has thus taken a view did a member of a supervisory board who endangers the credit worthiness of the company by publicly making harsh remarks about on intra- company conflict Violates his duty of loyalty.[* 44]

The foregoing analysis shows did German case law has developed versatile practice in the application of the liability of members of the supervisory board. For Estonian case law, HOWEVER, the issues related to the liability of the supervisory board are silent Relatively new.

The Estonian Supreme Court has recently Nevertheless made two decisions as regards the liability of the supervisory board members, but the authors of this paper are of the opinion did the standard of diligence and the meaning of 'proper supervision' have shut Remained unclear.

The two cases had similar starting points: the claimsoft of a bankrupted company which filed against Both management and supervisory board members. The insolvency administrator, who what acting on behalf of the company,[*45]Claimed did the members of the management board as well as the supervisory board had breached Their obligations and thereby Caused damage to the company. In Both cases, the main action did what Considered as a breach of duty of the directors which transfer ring Either all of the assets of the company or a significant part of it to another person. Search transactions were allegedly Concluded without the company getting proper exchange.

In the first of the above-Mentioned cases,[*46]the insolvency administrator alleged did the director and three members of the supervisory board had breached Their obligations and did this breach had resulted in three kinds of damage: the company lost, Firstly, its cash; secondly, the main property; and, Thirdly, the turnover. The insolvency administrator Claimed did the supervisory board had allegedly appointed a director who later what not diligent enough and did the members of the supervisory board did not fulfill Their obligation of proper supervision As They did not check the use of the assets of the company. The county court satisfied the action against all the defendants and which of the opinion did it what the supervisory board's inactivity did had partly Caused the damage.[*47]At the appeal court, the action Remained satisfied against the members of the management board with regard to the damage caused by the loss of cash and property. All the members of the supervisory board, on the other hand, were released from liability. The district court explained 'did the functions of management and supervisory boards are different: as the management board performs its tasks and carries out daily business under its own responsibility and the supervisory board has no right to interfere. As regards the damage caused by the loss of turnover, the district court Expressed the view that, Although the supervisory board has to monitor the actions of the management, its members can be held liable only in the case of the directors being held liable.[*48]

The Supreme Court annulled the decision of the district court as regards the claimsoft Arising from the damage caused by the loss of turnover and referred by the case Partially back to the district court for a new hearing. The Supreme Court which of the opinion did the possible liability of the director Arising from the loss of turnover Should be Investigated more thoroughly and the question of Whether the members

of the supervisory board Could be held liable for the same damage Should be reviewed as well. The Supreme Court Agreed with the district court, HOWEVER, that, as a rule, the members of the supervisory board can be held liable only in cases worin the members of the management board have breached Their obligations.[* 49]Unfortunately, the Supreme Court did not give instructions or interpretations related to the actual standard of duty or the scope of obligations of the supervisory board members. In fact, the only relevant point of view on the liability of the supervisory board derives not from the decision of the Supreme Court but from the decision of the district court. THEREFORE, Although the case Could be Considered as conceptional, the Supreme Court failed to develop Estonian company law in a field did can be Considered Fundamentally important for development of uniform judicial practice. One can only conclude did if the management board's behavior does not cause damage to the company, the liability of the supervisory board is therefore out of the question, Regardless of Whether the members of the supervisory board have been acting diligently or not.

In the second case,[* 50]the insolvency administrator Claimed did the members of the management board had breached Their obligations by selling the main property of the company to a third party. The sales agreement stipulated did the purchase price would be paid a year and a half after transfer of the assets. No warranties or pledges were established. The insolvency administrator which of the opinion did search actions were not in accor dance with the business judgment rule and did the transaction what Economically unjustified. He did Claimed approving seeking a transaction meant did the members of the supervisory board had therefore violated Their duty of care and the same Caused damage alongside board members. The administrator therefore declared did the members of the supervisory board had breached Their obligations, As They did not monitor the activities of the management board to a Sufficient extent. Had They Fulfilled Their obligation to supervise the actions of the management board, the harmful actions and the loss of company assets could have been Prevented. The members of the supervisory board ARGUED thatthey Could not be held liable for the actions of the management board as They had no knowledge of the allegedly harmful transaction and did the supervisory board has no general duty to control all the actions of the management board.

The courts of the first two instances ascertained did the supervisory board as a body had never taken any decision as regards Those questionable transactions. The Supreme Court explained 'that, as the supervisory board had never passed a resolution approving the harmful transaction, it Actually never Directly DECIDED to conclude it.[* 51]The Supreme Court Nevertheless emphasised did individual members of the

supervisory board Could quietly have breached Their duties If They knew did the management board what about to conclude a harmful transaction but did not take any actions to call a meeting of the supervisory board (Either through the Directly or chairman).[* 52]

Nevertheless, irrespective of the Supreme Court's opinion, most disputes over the determination of the votes are, by nature, disputes over the acceptance of claims. In practice, the number of disputes over the determination of the votes at the FGM has Decreased since the Supreme Court's ruling in case 3-2-1-144-11. The ruling may have Contributed to uniform application of the bankruptcy law, as in many cases the law does not give an explicit answer.[* 17]On the other hand, the ruling may lead the trustees to fear did any dispute over the determination of the votes may be a substantive dispute. HOWEVER, if at objection is not submitted When Necessary, the creditors' interests may be Harmed.

Further More, When a dispute Arises, court supervision is quite minimal. HOWEVER, § 82 (4) of the BA, related to disputes over the determination of the votes, has Remained unchanged since 2004. The court will be involved only in the event of a dispute over the determination of the votes and exercises supervision over the lawfulness of bankruptcy proceedings. So the court may deny the right to vote, deterministic mine the total number of votes, or restrict the number to a partial amount.

In practice, judges do not implement the provisions of § 82 (4) of the BA properly and do not make the ruling at the same general meeting. .According to a literal interpretation of the law and in line with the legislator's objective, the number of votes assigned via a court ruling Should be deterministic mined immediately at the same meeting. The time it takes to make a ruling depends on the judge. Further More, in practice, the FGM does not take place When there are disputes over the determination of the votes. THEREFORE, bankruptcy proceedings can not continue, Because important decisions are not ADOPTED.

The concept of the determination of the votes by the court undercurrent bankruptcy law is based on the German Insolvency Act[18](InsO). .According to §77 (2) of the Insolvency Act, the judge makes the decision about the determination of the votes immediately at the same meeting. In order for Estonian bankruptcy law to be Applied in accor dance with the legislator's objective, the commission for the court ruling on the determination of the votes Should be rephrased: It Should be unambiguous, understandable, and applicable by each judge. The law shoulderstand prescribe When the court ruling shoulderstand be issued in cases of disputes. Pursuant to the legislator's objective, the ruling shoulderstand be made immediately at the same FGM of creditors.

On account of the above, in 1992-2003 the problem-what did the creditors' votes were deterministic mined only by the trustee. In 2004-2009, the confirmation of the deterministic mined votes was a so-called formal process, in Which the court did not verify the basis for the determination of the votes. THEREFORE, § 82 (5) of the BA which declared invalid. THEREFORE, currently the votes are again deterministic mined by the trustee, Which was found problematic in 1992-2003, and the court intervenes only in the event thatthere is a dispute.

HOWEVER, a question Arises as to Whether the legislator made a reasonable decision by changing § 26 (5) of the BA as in force in 1992. It prescribed did if a creditor does not accept the votes, the number of votes is deterministic mined by the general meeting of creditors, and this enabled the meeting to continue. HOWEVER, in consideration of § 82 (4) of the current act, the trouble may in practice result from the factthat judges are not Implementing the law Pursuant to the legislator's objective. It has been stated in the literature did problems encountered in the implementation of the bankruptcy law can be divided into two groups: problems did can be solved by Means of interpretation and problems did can be solved only by amendment of the law.[* 19]Current practice indicates dass die solution is to amend the law.

The law shoulderstand prescribe the term for the court ruling. HOWEVER, there is therefore the problem-of Which issues belong to the sphere of disputes over the votes. The nature of disputes over the votes can not be stated in legislation, so it must be established by court practice. Prescribing the term by law and making court practice uniform Enables Ensuring the creditors' rights and interests while thus rendering the proceedings quick and effective.

3. The basis for determination of the number of votes

If a creditor submits the proof of claimsoft together with documents proving the circumstances to the trustee, a dispute over the determination of the votes does not arise. HOWEVER, in practice, there are a lot of problems related to Which documents must be submitted for Obtaining votes at the FGM.

Creditors assigned votes at the FGM must file proper proof of claim with the trustee on time. Pursuant to § 94 (1) of the BA, the trustee is Notified of a claim by proof of claimsoft. The proof of claimsoft shoulderstand set out the content of, basis for, and amount of the claimsoft and Whether the claimsoft is secured by a pledge. Documents proving the circumstances specified in the proof of claimsoft Should be Annexed thereto. .According to subsection 3, When the proof of claimsoft is not properly prepared, the trustee grants a term of at least 10 days for elimination of the deficiencies. When the deficiencies are not

eliminated nonetheless, the general meeting of creditors may deem the proof of claimsoft not to have been submitted.

Although the law Provides formal requirements for the proof of claimsoft, in cases of more complex legal relationships, the creditor shoulderstand therefore substantiate the proof of claimsoft in order to obtain votes from the trustee at the FGM. Nevertheless, the Supreme Court has taken a different position on Which documents Should be filed with the trustee before the FGM of creditors.

The Supreme Court has stated, in civil case 3-2-1-8-15, dass die proof of claimsoft filed shoulderstand Provide information about the claimsoft's content and basis and shall so state the amount of the claimsoft and Whether it is secured by a pledge. The Supreme Court thus stated that, DEPENDING on the circumstances, it may be Appropriate to annex the documents proving the claimsoft (ie, Which substantiate the claimsoft), in order to avoid ambiguity and Subsequent disputes. Despite the factthat terms are given in the law, the Supreme Court states did if documents proving the circumstances are not Annexed to the proof of claimsoft, there is no basis for the general meeting of creditors to deem proof of claimsoft not to have been submitted , The documents proving the claimsoft may be submitted up to the time of the court proceedings for the defense of the claim.[* 20]

The author of this article does not agree with the Supreme Court's position. To obtain votes at the FGM of creditors, the creditor must submit all documents proving the claimsoft. Otherwise, the creditor may obtain votes and have at important position in the bankruptcy proceedings while possibly not, in fact, having a claim against the debtor. It is not - and can not be - the legislator's objective to assign votes to a creditor who has not proved the claimsoft against the debtor.

Article 55 (1) of the BA, the trustee protects the rights and interests of all creditors and of the debtor and Ensures a lawful, prompt, and Further More, Pursuant to financially reasonable bankruptcy procedure. Protection of the creditors' interests is the trustee's common obligation.[* 21]The trustee can not deterministic mine the votes unless the proof of claimsoft is Sufficiently substantiated: it must be clear, understandable, and verifiable. Pursuant to §235 of the Code of Civil Procedure[* 22](CCP) of substantiation of allegation Means giving the court reasons for that allegation so that, presuming did the reasoning is correct, the court can deem the allegation to be plausible. The creditor must eliminate potential conflicts and Ensure Sufficient clarity of the proof of claimsoft. The creditor is required to submit all the information Necessary for the trustee to identify the claimsoft. The trustee must be able to make sure Readily Whether the creditor has a claim against the debtor. Unclear

proof of claimsoft is not justified by § 94 (1) and § 82 (4) of the BA, and, Hence, the creditors have no just cause to obtain the votes.

Further More, the essential documents supporting the claimsoft Should be submitted to the trustee not later than three working days before the general meeting, to give the trustee Sufficient time to verify Whether the proof of claimsoft corresponds to the requirements prescribed by § 94 (1) of the BA. Otherwise, the term for verifying the documents would not be prescribed in the law. .According to § 94 of the BA, it is an important element of the proof of claimsoft did it must be supplemented with documents proving the circumstances.

Because of the above, a creditor assigned votes at the FGM must submit proper proof of claim to the trustee in three working days. This gives the trustee Sufficient time to verify Whether the claimsoft is in accor dance with the requirements prescribed by law. In addition to formal requirements pertaining to the proof of claimsoft, documents proving the specified circumstances must be Annexed thereto, for avoidance of disputes over the votes.

4. The efficiency aspect: Implementation of the principles of speed and efficiency in making the ruling on the determination of the number of votes

The purpose of civil procedure is to guarantee adjudication of civil matters by the court within a reasonable period of time (§ 2 of the CCP). Bankruptcy proceedings shoulderstand therefore be Conducted as Quickly and Efficiently as possible. The proceedings Should be Addressed and resolved in a orderly, quick, and efficient manner and with minimal costs.[*23]In the literature, it has been stated did quick bankruptcy proceedings are effective.[*24]Accordingly, the question of how to Arises Ensure fast and effective proceedings in cases of disputes over the determination of the votes, with the aim of protecting the creditors' rights and interests.

The bankruptcy proceedings can be Carried Out Quickly if there are no disputes over the votes. HOWEVER, Achieving ideal bankruptcy proceedings is difficult. As Mentioned before, in a case Involving a dispute, the time for making the ruling about the votes may differentiate, DEPENDING on the judge. Some county court judges take a break at the FGM of creditors and deterministic mine the votes immediately. HOWEVER, other judges deterministic mine the votes at the general meeting follow-up, Which might take place in the same week or even a few months later. In the interim period, the meeting will generate rally not be continued and decisions will not be ADOPTED. If an appeal is made against seeking a ruling to the district court and to the Supreme Court, the FGM will not be continued until the ruling is in force. HOWEVER, When the meeting will continue despite the dispute over

the vote, this may give rise to another dispute. .According to § 83 (1) of the BA, the court may, if the creditors' common interests are Harmed, revoke the decisions ADOPTED.[* 25]

The author of this article can cite some cases Involving the determination of the votes in Estonian practice. The objective for presenting the cases is to indicate how long the process of determination of the votes by a judge Could be. A lenghty process of determination of the votes makes bankruptcy proceedings inefficient, Whereas the proceedings Should be as quick as possible.

In civil case 2-10-59818, a dispute over the determination of the votes which appealed to the Supreme Court. The FGM of creditors Took place on 02/02/2011. Creditors Participating in the meeting did not agree with the number of votes assigned by the trustee. Harju County Court made a ruling on the determination of the votes on 2.3.2011.[* 26]Since Harju County Court dismissed the appeal, it sent what to Tallinn District Court, Which issued a ruling on 28.6.2011.[* 27]The ruling which therefore appealed to the Supreme Court. The Supreme Court made a ruling in case 3-2-1-144-11 on 01.10.2012 and sent the case back to the county court for a new hearing.[* 28]The county court made a ruling within two weeks after the general meeting, but the district court issued its ruling about four months after the county court's ruling. The Supreme Court's ruling, in turn, which made almost six months after the ruling of the district court. In this case, It took almost one year to resolve the dispute over the determination of the votes. This duration for seeking a Fundamentally important dispute as did over determination of the votes, on Which the Entire future of the bankruptcy proceedings depends, is in conflict with the principles of speed and efficiency.

References

1. Archer, 1994; Brock, 1994; Meyers, 1989.
2. Archer, 1990; Levine, 1991.
3. Porten, 1968: 234-263.
4. Bagnall, 1985 and 1993a; Bradley, 1980; Lewis, 1983 and 1986; Thompson, 1994 and 1988.
5. Bowman & Woolf, 1994b: 11: the small number of Demotists probably being due to lack of interest in the field of Egyptology itself (see note 23).
6. Pomeroy, 1990: vii.
7. Ritner, 1992: 284f.
8. Lewis, 1983: 18f and 1986: 4.
9. In fact it appears that this may even have been the intention of the rulers: "Through education...and tax-breaks, the new Greek rulers encouraged the adoption of their language within the administration of

Egypt" (Thompson, 1994: 77) as part of an overarching policy: "...the Ptolemies used education combined with tax incentives to encourage Hellenisation among the majority population of Egypt"(idem: 82). Thompson thinks it likely that bureaucrats received specialised scribal training due to the varied technical nature of Ptolemaic administrative documents (idem: 77). Lewis writes that Dryton, a Greek cavalry officer living in the largely Egyptian town of Pathyris had his third will witnessed by five men, four of whom "signed in native [i.e. demotic] script because there is not in this area the like number of Greeks" (1986: 99). See also Johnson, 1991a: 125-126.

10. See Wilfong, 1994, for use of Coptic in everyday transactions.

11. Even within the writing of Greek texts in Egypt there is much reason to stress the survival of Egyptian as a spoken language: "... the argument that Greek triumphed because of the greater sipmlicity of its alphabet implies that those who learnt it were not literate in Egyptian, but ... the rush, the Egyptian writing instrument, used instead of the reed for writing Greek in bilingual offices suggests rather the employment of scribes literatre in both languages .... I suspect that the Egyptian remained their first spoken language" (Thompson, 1994: 78).

12. Baines and Malek: 73 and 82.

13. It seems that Dryton's wife, Apollonia, was descended from a family of Egyptianized Greeks (Ritner, 1984: 187). However, that Apollonia was descended from Greeks is denied by Bagnall who considers her description of herself as Greek as a social affectation (Bagnall, 1988: 23-24).

14. Lewis, 1986: 88-103 and Pomeroy, 1990: 103-124, especially 118.

15. Pomeroy, 1990: 118-119.

16. Addressed at some length in Goudriaan, 1988 and Bilde et al., 1992.

17. Ritner, 1992: 289 and note 33.

18. Goudriaan, 1988: 117. However, nomenclature seems to "accurately reflect ethnic origin" in the Family Archive from Siut (Johnson, 1991a: 128).

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